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January 6, 2005

Lawrence Norton, Esquire  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

AOR 2005-01

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
JAN 24 2005 10:54 AM

Re: Advisory Opinion Request

Dear Mr. Norton:

In Ad.Op. 1999-32, the Federal Election Commission determined that an Indian tribe was not subject to the prohibition on contributions by Federal contractors, 2 U.S.C. § 441c, where the tribe had established as a "separate entity" a tribal enterprise that was itself a Federal contractor.

This request for an advisory opinion is filed on behalf of our client, the Mississippi Band of Choctaw Indians ("Tribe"), which has established a tribal corporation – IKBI, Inc. – as a "separate entity" by the criteria set forth in Ad.Op. 1999-32. IKBI, Inc. intends to become a Federal contractor.

The question posed by this request is whether the Tribe can preserve its right to make Federal contributions if it serves as co-indemnitor, along with IKBI, Inc., on a performance bond that IKBI, Inc. must obtain in order to fulfill the terms of a construction contract.

**1. The factual situation.**

The Mississippi Band of Choctaw Indians is, as described by the FEC in an earlier advisory opinion, "a non-corporate entity organized in accordance with a constitution approved in 1975 by the Secretary of the Interior pursuant to 25 U.S.C. § 476." See Ad.Op. 1993-12. The Tribe's constitution at Article VIII, § 1(j), authorizes the Tribe:

To create, or to provide by ordinance for the creation of organizations, including public and private corporations, for any lawful purpose, which may be non-profit or profit-making, and to regulate the activities of such organizations by ordinance.<sup>1</sup>

<sup>1</sup> A copy of the Tribal Constitution is attached as Exhibit A.

In November, 1997, the Tribe enacted Ordinance No. 56 to regulate the establishment of certain Tribal business enterprises, and for other purposes.<sup>2</sup> The ordinance re-established an ongoing entity, the Choctaw Development Enterprise ("CDE"), as an unincorporated enterprise of the Tribe for the purpose of engaging in the business of residential, commercial and institutional construction. Ord. 56 at App.B. CDE is a "doing business as" ( or "d/b/a") arm of the Tribe. It is not a separate legal entity. *See, e.g.*, Ord. 56 at § 8 (tribal enterprises including CDE shall operate under the taxpayer identification number of the Tribe).

On June 28, 2004, pursuant to Art. VIII, section 1(j) of the Tribal Constitution, the Tribe adopted Ordinance 63 B, as amended on October 12, 2004 and on November 15, 2004, to charter IKBI, Inc. as a for-profit tribal corporation, established and chartered as a separate corporation pursuant to tribal law.<sup>3</sup> The charter of IBKI, Inc. states that it is:

wholly owned by Mississippi Band of Choctaw Indians d/b/a Choctaw Development Enterprise ("CDE"). The Mississippi Band of Choctaw Indians, a federally recognized Indian tribe, is sole shareholder.

IKBI Charter at Art. VII.(B) § 1.<sup>4</sup> Thus, unlike CDE, IKBI, Inc. was established as a separately incorporated legal entity and is not a "d/b/a" arm of the Tribe, although it is wholly owned by the Tribe, acting through CDE as its arm. IKBI, Inc. has received SBA certification as a § 8(a) minority business enterprise.<sup>5</sup>

The corporation is governed by a separate board of directors elected by the shareholder. *Id.* at (C) § 1. The charter requires board members to be members of the Tribe, but prohibits any member of the Tribal Council (which is the Tribe's governing body) from serving on the board. *Id.* The board has the "authority to manage the business and affairs of the corporation," although the authority to issue shares of the corporation is reserved to the Tribal Council. *Id.* at § 6. The board has the authority to waive the sovereign immunity of the corporation, although not the immunity of the Tribe or any other tribal entity or enterprise. *Id.* at § 9. The board elects and removes officers of the corporation, *id.* at (D) §§ 1, 3, and authorizes the officers to enter into contracts on behalf of the corporation. *Id.* at (F).

In addition, IKBI, Inc. has its own tax identification number. It maintains office space and records separate from the Tribe and has its own bank accounts separate from the Tribe. It

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<sup>2</sup> A copy of Ordinance 56 is attached as Exhibit B.

<sup>3</sup> A copy of Ordinance 63 B is attached as Exhibit C.

<sup>4</sup> A copy of the current form of Charter of IKBI, Inc. is attached to Ordinance 63 B (Exhibit C).

<sup>5</sup> A copy of the SBA's § 8(a) certification letter for IKBI, Inc. issued December 6, 2004 is attached as Exhibit D.

also has its own corporate employees and personnel policies, and it provides employee benefits separate from the Tribe.<sup>6</sup> Finally, it has separate legal counsel.

In July, 2004, at the time of the formation of IKBI, Inc., the Tribe (through CDE) provided approximately \$138,000 in initial capitalization to IKBI. The Tribe (through CDE) provided an additional payment of approximately \$330,000 to the corporation in supplemental capitalization in October, 2004.

IKBI, Inc. is a construction company and most of its planned work is to engage in construction projects for the United States or its agencies.<sup>7</sup> IKBI intends to seek both sole source and competitive bid contracts with various federal agencies, including the General Services Administration and the Federal Aviation Administration. These contracts will be funded with federally appropriated funds.

For all its construction projects, both Federal and non-Federal, the owner/purchaser will require IKBI, Inc. to obtain a standard performance bond from a reputable bonding company, and, in some instances, a bid bond and payment bond as well. As a condition for issuing the bonds, the bonding agent is requiring the Tribe (through CDE), as the sole stockholder of IKBI, to sign an "Agreement of Indemnity"<sup>8</sup> which obligates the Tribe (through CDE) to act as co-indemnitor (along with IKBI, Inc.) for any losses and liabilities that the surety may incur on the bonds.<sup>9</sup> As a startup company, IKBI, Inc. has neither sufficient in-house financial resources (net

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<sup>6</sup> IKBI, Inc. has always had § 401(k) retirement plan arrangements for its employees wholly separate from the Tribe's ERISA retirement plan. Early in 2004 IKBI, Inc. had arranged to "buy-in" to the Tribe's group health care plan, pursuant to which IKBI, Inc.'s employees could receive health care coverage under that plan, even though they are not tribal employees. The Tribe's group health care plan allows such participation by non-tribal employees per such buy-in arrangements where the individuals involved are employees of "subsidiaries" of the Tribe. However, IKBI, Inc.'s Board of Directors voted on December 23, 2004 to place their employees into a separate Blue Cross-Blue Shield plan. A copy of the IKBI, Inc. Board's action to make that change, effective January 31, 2005, is appended as Exhibit E. Hence, IKBI, Inc. employees will no longer participate in the Tribe's group health care plan after January 31, 2005.

<sup>7</sup> IKBI, Inc. will also seek contracts with state and local governments, but such contracts are not within the scope of Part 115. See 11 C.F.R. § 115.1(d) ("A person who contracts with a State or local jurisdiction or entity other than the United States or any department or agency thereof is not subject to this part, even if the State or local jurisdiction or entity is funded in whole or in part from funds appropriated by Congress.").

<sup>8</sup> A copy of the proposed Indemnity Agreement is attached as Exhibit F.

<sup>9</sup> Under the Tribe's Ordinance 56 and the Tribe's Constitution, CDE has no authority to bind the Tribe via the proposed Indemnity Agreement (Exhibit F) unless Tribal Council approval is obtained. Thus, Tribal Council approval for CDE to execute the Indemnity Agreement was obtained on December 28, 2004 by Resolution CHO-05-013. However, that council approval was contingent on the Tribe obtaining a favorable FEC ruling per this request. A copy of Resolution CHO-05-013 is attached as Exhibit G.

income) nor a sufficient, proven construction tract record to enable it to obtain the requisite bonds on its own. It is anticipated that IKBI, Inc. will in the future be able to obtain such bonding on its own (without any further need for the Tribe to serve as co-indemnitor) once it has developed a successful track record of project performance on its construction jobs and has built up its own net worth.

## **2. Question posed.**

The Tribe seeks an advisory opinion on whether, given the facts set forth above, the Tribe's agreement to act a co-indemnitor on the performance bond, bid bond, or payment bond for IKBI, Inc. – where IKBI, Inc. is a Federal contractor – would impair the Tribe's ability to continue to make contributions in Federal elections.

## **3. Analysis.**

### **A. General election law principles that apply to Indian tribes.**

The Commission has held that an unincorporated Indian tribe is a "person" under the Federal Election Campaign Act. 2 U.S.C. § 431(11); *see* Ad.Op. 2000-5 ("[T]he Commission has long interpreted the Act's definition of 'person' to include unincorporated Indian tribes..."); Ad.Op. 1978-1.

As a "person," a tribe is subject to the Act's limits on contributions to federal candidates, 2 U.S.C. § 441a(a)(1), but not subject to the aggregate election cycle limit on federal contributions that applies to "individuals" under 2 U.S.C. § 441a(a)(3). Ad.Op. 2000-5. The Commission has also made clear that the general prohibition on contributions by Federal contractors applies to Indian tribes. It specifically addressed this question in Ad.Op. 1993-12, an opinion also requested by the Mississippi Band of Choctaw Indians. In that opinion, the Commission stated that the Tribe "is subject to the provisions of 2 U.S.C. § 441c and would be prohibited from making contributions" if it has Federal contracts that fall within the definitions set forth in Part 115 of the Commission's regulations.<sup>10</sup>

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<sup>10</sup> The Commission there reviewed different types of contractual relationships between the Tribe and the Federal government. It held that Federal grants, administered by the Tribe under grant agreements and made available to the Tribe because of its "status as a government entity," do not fall within the Part 115 definition of Federal "contracts." The Commission also held that contracts between tribes and the Federal government entered into under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450 *et seq.*, are also not within the scope of Part 115. But the Commission did find that a procurement contract between the Tribe and the Bureau of Indian Affairs, whereby the Tribe agreed to sell posters and prints to the BIA, "is a standard or typical procurement contract" within the meaning of Part 115. Thus, because of this procurement contract, the Commission said that the Tribe was prohibited

In Ad.Op. 1999-32, the Commission addressed the relationship between a tribe and a sub-unit of the tribe that was a Federal contractor. In that matter, The Tohono O'odham Nation formed a Utility Authority (TOUA), which was "a tribally chartered unincorporated enterprise of the Nation." The TOUA sold electricity on the Nation's Reservation, including to the Bureau of Indian Affairs and the Indian Health Service. Even in the absence of a written contract with these Federal agencies, other than the monthly utility bill sent to them, the Commission concluded that TOUA had entered into a "commercial agreement" with the Federal agencies and therefore was a Federal contractor for purposes of the prohibition in section 441c.

The Commission then closely examined the relationship between TOUA as a Federal contractor, and the tribe itself, to determine whether the prohibition applicable to TOUA would apply to the Nation as well, or "whether, for purposes of section 441c, the Nation and TOUA can be treated as separate entities thereby permitting a distinction between the political contributions of the Nation and the possible Federal contractor status of TOUA."

The Commission approached this question with respect for the special status of Indian tribes. It noted that "the general relationship between tribal governments and their commercial ventures are unique and differ from usual relationships [of] entities that may be affiliated with each other." It stressed "the specialized and unique treatment afforded to tribal commercial entities in other areas of the law," and noted that courts have "maintained that a tribal enterprise may be treated as a separate and distinct entity from the tribe itself."<sup>11</sup>

The Commission concluded that TOUA "can be treated as a separate entity from the Nation and that the commercial activity of TOUA as a Federal contractor can be separated from the Nation and its political activities." It reached this conclusion even though TOUA was not a corporation "and thus is not formally separate from the Nation..." and "would not normally be considered as having a separate legal identity from the Nation." But this fact alone "is not necessarily dispositive of the question." The Commission said:

Case law suggests that to determine when a tribe is acting in its business or in some other capacity, courts must look beyond whether the tribe or one of its units has incorporated itself. The courts instead look to the conduct in question and the powers actually granted to the tribe, or the enterprise, under their governing documents.

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from making Federal political contributions under 2 U.S.C. § 441c. A subsequent opinion, Ad.Op. 1999-32, discussed at length below, expressly superseded this last conclusion. See n.12, *infra*.

<sup>11</sup> In this regard, the Commission cited *Navajo Tribe v. Bank of New Mexico*, 700 F.2d 1285 (10<sup>th</sup> Cir. 1982) and *Navajo Tribal Utility Authority v. Arizona Department of Revenue*, 608 F.2d 1228 (9<sup>th</sup> Cir. 1979).

In reaching its conclusion that TOUA could be treated as a “separate entity” from the tribe, the Commission relied on several factors that demonstrated that TOUA “enjoys a degree of autonomy in its functions and operation.” These factors included that TOUA:

- had its own bank account
- hired its own employees
- established its own personnel policies and employee benefits arrangements
- purchases and sells its own property
- hires and directs its own legal counsel

The Commission also noted that the tribe segregated funds received from TOUA from its other tribal funds, and that no member of the tribal council could be a member of the TOUA executive board.

The Commission concluded that all these factors, taken together, demonstrated a sufficient separateness of TOUA such that its status as a Federal contractor would not apply to its parent tribe so as to impair the parent tribe’s ability to make political contributions.<sup>12</sup>

**B. Application of the standards in Ad.Op. 1999-32 to the relationship of the Tribe and IKBI, Inc. and the proposed indemnification agreement.**

Each indicator of “autonomy” cited by the Commission in Ad.Op. 1999-32 also applies to IKBI, Inc. IKBI has its own bank accounts, hires its own employees, has established its own personnel policies and benefits plans (*see*, n.6), purchases or leases its own property and retains its own legal counsel. Further, as in the TOUA advisory opinion, no member of the Tribe’s Council can serve as a board member of IKBI. Nor are funds from IKBI, Inc. commingled with other funds of the Tribe.

Indeed, IKBI’s “autonomy” is plainly *stronger* in a significant way than the situation approved by the Commission in Ad.Op. 1999-32. There, TOUA was an *unincorporated*

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<sup>12</sup> As noted above, in Ad.Op. 1993-12, the Commission held that the Mississippi Band of Choctaw Indians would be considered a Federal contractor when it engaged in procurement contracts through several tribally chartered “unincorporated commercial ventures that operate as subordinate economic enterprises of the Tribe.” By contrast, in Ad.Op. 1999-32, the Commission held that the Tohono O’odham Nation would *not* be treated as a Federal contractor when a tribally chartered but unincorporated commercial venture, TOUA, engaged in federal procurement activity. In making this ruling, the Commission acknowledged the inconsistency with its earlier ruling, and stated that “that portion of Advisory Opinion 1993-12 concerning the analysis of procurement contracts between tribal enterprises and the Federal Government is superseded by this opinion.” Instead, the Commission said, its new approach “would require further analysis of the relationship of the tribal enterprises considered in the 1993 opinion before the application of section 441c could be determined.”

enterprise of the tribe and, as the Commission stated, was “not formally separate” from the Nation, nor did it have “a separate legal identity” from the Nation.

Here, IKBI, Inc. is established as a separate tribally-chartered corporation so it, by contrast, does have a formally separate “legal identity” from the Tribe as evidenced by its separate tax identification number. Thus, the degree of separation of IKBI, as a Federal contractor, from the Tribe is, on this key aspect, objectively superior to the degree of separation between TOUA and the Tohono O’odham Nation that was approved as sufficient for section 441c purposes in Ad.Op. 1999-32.

The question then becomes whether this otherwise legally sufficient degree of separation between IKBI, Inc. and the Tribe is fatally compromised *solely* by the Tribe serving as co-indemnitor on the performance bond (or bid or payment bonds) for the benefit of IKBI, Inc.

Although the Commission has not previously addressed this precise question, there are strong arguments to support the view that, for purposes of the application of section 441c, the separation between the two entities is not impermissibly impaired by the proposed indemnification.

First, in Ad.Op. 1999-32, discussing the TOUA enterprise, the Commission cited *Navajo Tribe v. Bank of New Mexico*, 700 F.2d 1285 (10<sup>th</sup> Cir. 1982), for the proposition that “a tribal enterprise may be treated as a separate and distinct entity from the tribe itself.” Yet in that case, the Tenth Circuit noted that the Navajo Tribe had entered into a blanket indemnification agreement for the construction bonds of its tribal enterprise, the Navajo Housing and Development Enterprise (NHDE). 700 F.2d at 1288 n.2.<sup>13</sup> Thus, even though the *Navajo* case involved facts where a tribe indemnified its subordinate enterprise – indeed, provided an indemnification on a blanket basis – the Commission relied on the case to illustrate the point that a tribal enterprise “may be treated as a separate and distinct entity” from the tribe for purposes of applying the Federal contractor prohibition in the campaign finance laws.

Second, even if the Tribe becomes a co-indemnitor on the surety bond, IKBI, Inc. would continue to operate as a separate corporation, observe the formalities of its separate corporate

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<sup>13</sup> The court cited resolutions enacted by the Navajo Tribal Council that “authorized the indemnification of bonding companies in the event of default by NHDE on its construction projects. A similar Council resolution expressly authorized the guaranteeing of a loan from Standard Life and Accident Insurance Company to NHDE.” 700 F.2d at 1288 n.2. The court cited these specific instances of the Navajo Tribe’s indemnification of NHDE to make the point that the tribal enterprise *otherwise* did not have the authority to obligate the funds of the tribe, a factor that the court considered relevant in finding the tribal enterprise to be a separate legal entity. *Id.*

form, operate through the independent business judgment of its board, and thus maintain its identity as a “separate entity” from the Tribe.<sup>14</sup>

Finally, it is relevant that the Commission has shown respect for an Indian tribe’s status as a sovereign entity, and has noted the “specialized and unique treatment” afforded to tribal enterprises. *See* Ad.Op. 1999-32. There, the Commission said that “the general relationships between tribal governments and their commercial ventures are unique and differ from usual relationships considered in past advisory opinions regarding entities that may be affiliated with each other.”

The Commission’s recognition of the special place afforded in the law to tribes and tribal enterprises is well grounded in modern federal Indian policy. For nearly thirty years, the overriding federal policy toward tribes has promoted tribal economic development and self-sufficiency. The landmark Indian Self-Determination Act, an initiative of the Nixon Administration, expressed the basic policy as follows:

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<sup>14</sup> In Ad.Op. 1999-32, the Commission cited a related advisory opinion that dealt with the analogous question of whether a parent corporation is subject to section 441c if its majority-owned subsidiaries are Federal contractors. *See* Ad.Op. 1999-32 at n. 9 *citing* Ad.Op. 1998-11. There, the Commission applied the test of whether a parent company was “a separate and distinct legal entity from its Federal contractor subsidiaries” or, put differently, whether the subsidiaries were “merely agents, instrumentalities, or alter egos of” the parent.

This test is a familiar one that the Commission has applied on multiple occasions in the corporate context. *See, e.g.,* Ad.Op. 1997-19 (parent holding company can make contributions on the assumption “it is a distinct legal entity and not merely the agent, instrumentality or alter ego of its associated national banks”); Ad.Op. 1995-31 (the parent and subsidiary companies “are distinct legal entities and not merely the agents, instrumentalities or alter egos of their associated state or Federal banks”); Ad.Op. 1995-32 (same); Ad.Op. 1981-49 (parent holding company of Federally chartered bank may make political contributions even though wholly owned subsidiary could not); Ad.Op. 1981-61 (same); Ad.Op. 1980-7 (subsidiary corporation is considered “a distinct legal entity, an entity in its own right, apart from its parent” unless “circumstances are such that one corporation is merely an agent, instrumentality, or alter ego of another corporation”).

The Commission indicated in Ad.Op. 1999-32 that a more liberal test should apply to the relationship between tribes and their economic development enterprises than applies to private corporations and their subsidiaries, because of a tribe’s “unique” status. But even if the Commission were to apply the test developed in the corporate context to the relationship between the Tribe and IKBI, Inc., it should also find that IKBI, Inc. is a “separate and distinct legal entity” from the Tribe, notwithstanding the proposed indemnification agreement.



The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.

25 U.S.C. § 450a(b) (emphasis added). Numerous Congressional enactments reflect this strong federal goal of encouraging the development of viable and productive tribal economies.<sup>15</sup> These same goals have been repeatedly underscored in the express policies of the Presidents, both Democratic and Republican.<sup>16</sup> The Supreme Court likewise has noted the overarching policy of promoting tribal economic progress that guides federal Indian policy, and has relied upon that policy in cases involving various state laws that, if applied in the tribal context, could constrain tribal economic development. *E.g.*, *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143-44 (1980) (noting various Congressional enactments "demonstrating a firm federal policy of promoting tribal self-sufficiency and economic development."); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 335-36 (1983) (noting federal purpose of promoting "tribal self-sufficiency and economic development," and adding that "when a tribe undertakes an enterprise under the authority of federal law, an assertion of State authority must be viewed against any interference with the successful accomplishment of the federal purpose").

As this consensus of all three branches of the federal government underscores, the "unique" status of an Indian tribe as "a government entity," Ad.Op. 1993-32, and the need for tribes to have latitude to engage in economic development in order to serve their members,

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<sup>15</sup> *E.g.*, Indian Financing Act of 1974, 25 U.S.C. §§ 1451-1544 (the policy of Congress is to enable Indians to "enjoy a standard of living from their own productive efforts comparable to that enjoyed by non-Indians in neighboring communities."); Native American Business Development, Trade Promotion, and Tourism Act of 2000, 25 U.S.C. §§ 4301-4307 (the purposes of the Act include "[t]o promote economic self-sufficiency and political self-determination for Indian tribes."); Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 ("a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government.").

<sup>16</sup> Presidential Proclamation No. 7500 of November 12, 2001, 66 Fed. Reg. 57641 (Nov. 15, 2001) ("We will protect and honor tribal sovereignty and help to stimulate economic development in reservation communities."); Presidential Exec. Order No. 13175, 65 Fed. Reg. 67249, Consultation and Coordination With Indian Tribal Governments, § 2(c), (Nov. 6, 2000) ("The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.")

Lawrence Norton, Esq.  
January 6, 2005  
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counsels for the Commission to construe section 441c in a fashion that does not infringe on the ability of tribes to establish and support subordinate economic enterprises without sacrificing the tribe's right to make political contributions.

For the reasons set forth above, the Commission is respectfully requested to rule that under the standards applied in Ad.Op. 1999-32, the Tribe will not assume the status of a Federal contractor and lose its right to make Federal contributions solely on account of its execution of the indemnity agreement to serve as co-indemnitor, along with IKBI, Inc., on performance, bid or payment bonds that IKBI, Inc. must obtain in order to fulfill the terms of its Federal and non-Federal construction contracts.

Sincerely,



C. BRYANT ROGERS

Enclosures: as indicated

cc: Phillip Martin, Chief, Mississippi Band of Choctaw Indians  
Melissa Carleton, Acting Attorney General, Mississippi Band of Choctaw Indians

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## **SCHEDULE OF EXHIBITS**

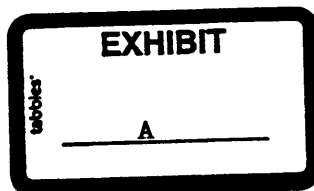
- Exhibit A. Copy of the Revised Constitution and Bylaws of the Mississippi Band of Choctaw Indians (1975)
- Exhibit B Copy of Mississippi Choctaw Ordinance 56
- Exhibit C Copy of Mississippi Choctaw Ordinance 63 B. A copy of the (amended) Charter of IKBI, Inc. is attached to Ordinance 63 B (Exhibit C).
- Exhibit D Copy of IKBI, Inc.'s SBA § 8(a) certification as a minority business enterprise dated December 6, 2004
- Exhibit E Copy of the IKBI, Inc. Board of Directors' minutes of December 23, 2004
- Exhibit F Copy of the proposed Indemnity Agreement
- Exhibit G Copy of Choctaw Tribal Council Resolution CHO-05-013

A

**REVISED CONSTITUTION AND BYLAWS  
OF THE  
MISSISSIPPI BAND OF CHOCTAW INDIANS**

**AS APPROVED BY THE COMMISSIONER OF  
INDIAN AFFAIRS ON MARCH 28, 1975**

**P.O. BOX 6010  
CHOCTAW BRANCH  
PHILADELPHIA, MS 39350**





# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
CHOCTAW AGENCY  
PHILADELPHIA, MISSISSIPPI 39350

ON REPLY REUSE FOR

Administration

Mr. Phillip Martin, Chief  
Mississippi Band of Choctaw Indians  
Route 7, Box 21  
Philadelphia, Mississippi 39350

Dear Mr. Martin:

There is enclosed the Revised Constitution and Bylaws of the Mississippi Band of Choctaw Indians which was approved by the Commissioner of Indian Affairs on March 28, 1975.

Sincerely yours,

*Philip H. Harrison*  
Superintendent

Enclosure



BY DEPT. ORDER 907  
Tribal Government  
Services

# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
WASHINGTON, D.C. 20245

MAR 21 1975

Through: Area Director, Eastern Area Office

Mr. Robert C. Benn

Superintendent, Choctaw Agency

Dear Mr. Benn:

We have received the results of the election held on December 17, 1974, by the qualified voters of the Mississippi Band of Choctaw Indians. The election was called in accordance with an order duly approved on October 17, 1974, which permitted the qualified voters of the band to adopt or reject a proposed revised constitution and bylaws.

When the original draft of the proposed constitution and bylaws was submitted for Secretarial review, Article III of the bylaws contained a thirty percent adoption requirement. In conjunction with our approval action following the election it was discovered that the thirty percent requirement had been increased to forty percent. As you know, further action on the constitution has been delayed pending clarification of this point as less than forty percent participated in the election. With the adoption of CIO-74-75, the tribal council has adequately clarified this inconsistency, and we have made the necessary correction of Article III of the bylaws to reflect the council's true intent as requested.

As evidenced by the Certificate of Results of Election, signed by the election board members, the proposed revised constitution and bylaws was duly adopted by the voters.

The Revised Constitution and Bylaws of the Mississippi Band of Choctaw Indians is hereby approved pursuant to the authority delegated to me by 250 DM 1.1 and returned for delivery to the band.

Sincerely yours,

*Maria Thompson*  
Commissioner of Indian Affairs

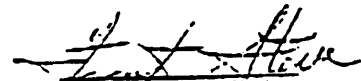
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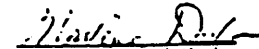
## CERTIFICATE OF RESULTS OF ELECTION

Pursuant to an election authorized by the Acting Deputy Commissioner of Indian Affairs on October 17, 1974, the attached Revised Constitution and Bylaws of the Mississippi Band of Choctaw Indians was submitted to the qualified voters of the band and was on Dec. 17, 1974, duly <sup>adopted</sup> ~~rejected~~ by a vote of 325 for, and 237 against, in an election in which at least thirty percent of the 1687 <sup>(number)</sup> entitled to vote cast their

ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

  
Chairman, Election Board

  
Election Board Member

  
Election Board Member



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## **REVISED CONSTITUTION AND BYLAWS OF THE MISSISSIPPI BAND OF CHOCTAW INDIANS**

### **PREAMBLE**

We, the Choctaw Indians, members of the Mississippi Band of Choctaw Indians, desiring to promote the achievement of self-government for the Choctaw people do, for our welfare and benefit, hereby adopt and proclaim the following constitution and bylaws.

### **ARTICLE I - NAME**

The name of this organization shall be the Mississippi Band of Choctaw Indians and may hereinafter be referred to as "the tribe."

### **ARTICLE II - JURISDICTION**

The jurisdiction of the Mississippi Band of Choctaw Indians shall extend to all lands now held or which may hereafter be acquired by or for or which may be used under proper authority by the Mississippi Band of Choctaw Indians, and to all persons who are now or may hereafter become members of the Mississippi Band of Choctaw Indians.

### **ARTICLE III - MEMBERSHIP**

Sec. 1. The membership of the Mississippi Band of Choctaw Indians shall consist of:

- (a) All Choctaw Indians of one-half (1/2) or more Choctaw blood, resident in Mississippi, January 1, 1940, as shown by the census roll maintained by the Bureau of Indian Affairs at the Choctaw Agency, provided that the tribal council shall have the power to revise said rolls, with the approval of the Secretary of the Interior at any time.
- (b) Any child of one-half(1/2) or more Choctaw blood born to any enrolled member of the band after January 1, 1940, shall be entitled to membership.

Sec. 2. The tribal council shall have the power to pass ordinances, subject to the approval of the Secretary of the Interior, governing future membership, loss of membership, and the adoption of new members; provided that no person of less than one-half degree of Choctaw blood shall be admitted to membership in the Mississippi Band of Choctaw Indians.

### **ARTICLE IV - GOVERNING BODY**

Sec. 1. The Mississippi Band of Choctaw Indians shall be governed by a tribal

council and a tribal chief whose powers are enumerated in Articles VIII and IX herein.

Sec. 2. The tribal council shall consist of elected representatives from the seven (7) recognized Choctaw communities. Each community shall be entitled to representation on the tribal council according to population as is hereinafter provided:

Bogue Chitto Community	3
Conehatta Community	3
Pearl River Community	3
Red Water Community	2
Standing Pine Community	2
Tucker Community	2
Bogue Homa Community	1

Sec. 3. The tribal chief shall be elected by the Choctaw people at large with each registered voter entitled to one vote.

Sec. 4. The tribal council shall have authority to make changes in the number of representatives from each community according to future community needs, community population changes or applicable Federal law, subject to the approval of the Secretary of the Interior.

Sec. 5. In order to qualify for and seek election to a seat on the tribal council, a person must

- (a) be an enrolled member of the tribe.
- (b) claim residence by registration in the community which he intends to represent.
- (c) be at least 21 years of age.

Sec. 6. In order to qualify for and seek election to the office of tribal chief, a person must

- (a) be an enrolled member of the tribe.
- (b) be at least 30 years of age prior to the date of election.

#### ARTICLE V - ELECTIONS

Sec. 1. Any member of the Mississippi Band of Choctaw Indians, whether male or female, who is eighteen (18) years of age or more and registered according to rules set forth by the tribal council, shall be entitled to vote in any tribal election.

Sec. 2. The tribal council shall prescribe rules and regulations to govern the conduct of tribal elections consistent with this constitution and bylaws. All elections shall be by secret ballot.

Sec. 3. The first regular election under this revised constitution and bylaws shall take place in June 1975. Subsequent thereto, regular elections shall be

held in June of odd-numbered years. The present tribal council representatives shall remain in office until their successors are duly elected and seated.

Sec. 4. In all tribal council elections, the person receiving the largest number of votes for a given position shall be declared elected.

Sec. 5. For the election of the tribal chief, the person receiving a majority of the total votes cast for all candidates shall be declared the tribal chief. In the event that no person receives a majority of the total votes cast, the two candidates receiving the highest number of votes shall be paired in a run-off election. This run-off election shall be held within thirty (30) days of the initial election. Of these two candidates, the one who receives a majority of the total votes cast in the run-off election shall be declared the tribal chief.

Sec. 6. The term of office for members of the tribal council shall be four (4) years and until their successors are duly elected and seated, consistent with Sec. 7 below.

Sec. 7. In the regular tribal council election of June, 1975, eight (8) council representatives shall be elected for four (4) year terms and eight (8) council representatives shall be elected for two (2) year terms, to wit:

	<u>4 Year Terms</u>	<u>2 Year Terms</u>
Bogue Chitto Community	1	2
Conehatta Community	1	2
Pearl River Community	1	2
Red Water Community	2	0
Standing Pine Community	1	1
Tucker Community	1	1
Bogue Homa Community	1	0

For the June, 1975, tribal election, the candidate receiving the most votes in each community will be elected to serve for a 4-year term, with the other candidate(s) being elected to serve 2-year term. This provision does not apply to the Red Water and Bogue Homa Communities.

Beginning with the regular tribal council election of June, 1977, and continuing thereafter, all council representatives shall be elected for four (4) year terms.

Sec. 8. Newly elected members of the tribal council shall take office at the first regular meeting of the council following their election.

Sec. 9. The term of office for the tribal chief shall be four (4) years and until a successor has been elected and seated.

Sec. 10. At the first regular meeting following each election, the tribal council shall elect, from among the membership of the council, a vice-chief and a secretary-treasurer with such powers and duties as are hereinafter enumerated.

These officials shall serve for 2 years or until their successors are elected and seated.

#### ARTICLE VI - VACANCIES AND REMOVAL FROM OFFICE

Sec. 1. If a vacancy occurs in the membership of the tribal council and less than one (1) year remains of the term of the member who has vacated his position, the tribal chief shall appoint a successor to such member, who shall serve until his successor is duly elected and seated at the next regular election. The appointee shall claim residence in and represent the same community as did the member who vacated his position.

Sec. 2. If a vacancy occurs in the membership of the tribal council and more than one (1) year remains of the term of the member who has vacated his position, the tribal chief shall, within sixty (60) days, cause to be held a special election in the community entitled to representation for the purpose of filling the vacancy.

Sec. 3. If a vacancy occurs in the office of tribal chief and less than one (1) year remains of his term of office, the office shall automatically be filled by the vice-chief of the tribal council.

Sec. 4. If a vacancy occurs in the office of tribal chief and more than one (1) year remains of his term of office, the tribal council shall, within sixty (60) days, cause to be held a special election in which all qualified voters of the tribe may participate for the purpose of filling vacancy. The Tribal vice-chief shall serve as tribal chief during the period of such vacancy until a new tribal chief is elected and seated.

Sec. 5. If a vacancy occurs in the office of vice-chief or of the secretary-treasurer of the tribal council, such a vacancy may be filled by the council by election of one of its members to the office.

Sec. 6. Any member of the tribal government (including the tribal chief and members of the tribal council) or any employee of the Mississippi Band of Choctaw Indians, who, during the term for which he is elected or appointed, is convicted of a felony shall be subject to removal from his office by action of the tribal council.

Sec. 7. Any of the seven (7) recognized Choctaw communities represented on the tribal council may petition for the recall of a member it has elected by presenting, at least six months prior to the expiration of such member's term of office, a petition signed by at least forty percent (40%) of the eligible voters in that community. Within sixty (60) days the tribal council shall cause to be held a special election on the question of recall. No council member shall be recalled except by the affirmative vote of a majority of those voting in an election in which at least seventy-five percent (75%) of the persons eligible to vote shall have voted. Should the recall be approved by the voters, Article VI, Sections 1 and 2, above, shall apply.

Sec. 8. The tribal council may remove council officers from office for cause by two-thirds vote of the council members at a meeting at which a quorum is present, but can neither terminate nor affect their status as council members through such action. The tribal council shall prescribe the methods by which this removal from office may be carried out.

Sec. 9. The tribal chief may be removed from office if, at least six months prior to the expiration of his term, a petition bearing the signatures of at least forty percent (40%) of the registered voters in the tribe is presented to the tribal council. Within sixty (60) days of such presentation, the tribal council shall cause to be held a special election on the question of recall. If a majority of those voting vote for recall, provisions of Article VI, Section 1 and 2, shall apply, provided that at least seventy-five percent (75%) of the eligible voters in the tribe shall have voted.

#### ARTICLE VII - COMMUNITY ORGANIZATIONS

The enrolled members of the seven Choctaw communities shall have the right to form local community organizations and adopt their own rules and regulations in harmony with this constitution and bylaws. It shall be the duty of the councilman from each community to report regularly all the actions and decisions of the tribal council to the community organizations.

#### ARTICLE VIII - POWERS AND DUTIES OF THE TRIBAL COUNCIL

Sec. 1. The legislative power of the Mississippi Band of Choctaw Indians is vested in the tribal council and shall be exercised in accordance with this constitution and bylaws and the Constitution and Laws of the United States applicable to Indian tribes. In addition to exercising any other lawful legislative power of the Mississippi Band of Choctaw Indians, the tribal council is empowered:

- (a) To negotiate with and to approve or disapprove contracts or agreements with Federal, State, or local governments, with private persons, or with corporate bodies.
- (b) To approve or disapprove any sale, disposition, lease or encumbrance of tribal lands, interests inland, tribal funds, or other tribal assets.
- (c) To establish procedures for the conduct of all tribal government and business operations, including the regulation of conflict of interest and nepotism.
- (d) To advise the Secretary of the Interior with regard to all appropriation estimates of Federal projects for the benefit of the Mississippi Band of Choctaw Indians prior to the submission of such estimates to the Office of Management and Budget and to Congress.

- (e) To employ and pay legal counsel, subject to the approval of the Secretary of the Interior so long as such approval is required by Federal law.
- (f) To appropriate available tribal funds for the benefit of the tribe or of any of its communities.
- (g) To approve or disapprove operating budgets upon submission by the tribal chief.
- (h) To approve or disapprove all allocations or disbursement of tribal funds (or funds under the control of the tribe) not specifically appropriated or authorized in a budget approved by the tribal council.
- (i) To establish and enforce rules, consistent with applicable Federal statutes and the regulations of the Secretary of the interior, for the management of tribal lands, including, but not limited to, the making and revocation of assignments, and the disposition of timber, oil, and mineral resources.
- (j) To create, or to provide by ordinance for the creation of organizations, including public and private corporations, for any lawful purpose, which may be non-profit or profit-making, and to regulate the activities of such organizations by ordinance.
- (k) To promote and protect the health, peace, morals, education, and general welfare of the tribe and its members.
- (l) To borrow money from any source whatsoever without limit as to amount, and on such terms and conditions and for such consideration and periods of time as the tribal council shall determine; to use all funds thus obtained to promote the welfare and betterment of the tribe and of its members; to finance tribal enterprises; or to lend money thus borrowed.
- (m) To establish and enforce ordinances governing the conduct of tribal members; providing for the maintenance of law, order and the administration of justice; regulating wholesale, retail, commercial, or industrial activities on tribal lands; establishing a tribal court; and defining the powers and duties of that court; subject to the approval of the Secretary of the Interior where such approval is required by Federal law.
- (n) To establish a basic departmental structure for the tribal government executive branch.
- (o) To establish policies relating to tribal economic affairs and enterprises in accordance with this constitution and bylaws.
- (p) To pass any ordinances and resolutions necessary or incidental to

the exercise of any of the foregoing powers and duties.

- (q) To do such acts of a governmental and public nature as are not prohibited by applicable laws or by this constitution and bylaws.
- (r) To levy and collect taxes and raise revenue to meet the needs of the tribe or to support tribal government operations.

#### ARTICLE IX - POWERS AND DUTIES OF THE CHIEF

Sec. 1. The tribal chief of the Mississippi Band of Choctaw Indians shall have the following executive powers and duties subject to any limitation imposed by the statutes or the Constitution of the United States or by this constitution and bylaws:

- (a) To serve as the principal executive officer of the tribe and as head of the executive branch of the tribal government.
- (b) To carry out policies established by the tribal council.
- (c) To negotiate contracts or agreements with Federal, State, or local governments, private persons, or corporate bodies and to submit them to the tribal council for approval.
- (d) To manage, administer and direct the operation of tribal programs, activities, and services and to report to the tribal council the status of each program at least annually.
- (e) To prepare budgets, budget estimates, and financial reports for submission to or at the direction of the tribal council.
- (f) To provide for the proper receipt, deposit, disbursement, and accounting of all funds (or funds under control of the tribe) consistent with this constitution and bylaws and such policies as may be established by the tribal council.
- (g) To provide for the protection and maintenance of the property, equipment, and official records of the tribe.
- (h) To provide for enforcement of the rules, regulations, and ordinances enacted by the tribal council.
- (i) To preside over the meeting of the tribal council and to vote only in case of a tie.
- (j) To exercise such additional executive powers as are necessary or incidental to the performance of the powers and duties enumerated above, and which are neither specifically denied to the tribal chief herein.



## ARTICLE X - RIGHTS OF INDIANS

Sec. 1. The Mississippi Band of Choctaw Indians, in exercising powers of self-government shall not:

- (a) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble and to petition for a redress of grievances.
- (b) Violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizure, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.
- (c) Subject any person for the same offense to be twice put in jeopardy.
- (d) Compel any person in any criminal case to be a witness against himself.
- (e) Take any private property for a public use without just compensation.
- (f) Deny to any person in criminal proceeding the right to a speedy and public trial; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and, at his own expense, to have the assistance of counsel for his defense.
- (g) Require excessive bail, impose excessive fines, inflict cruel and unusual punishment, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of six months or a fine of \$500, or both.
- (h) Deny to any persons within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.
- (i) Pass any bill of attainder or ex post facto law.
- (j) Deny to any person accused of an offense punishable by imprisonment, the right, upon request, to a trial by jury of not less than six persons.

Sec. 2. The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of the tribal court.

## ARTICLE XI - INITIATIVE AND REFERENDUM

Sec. 1. The members of the tribe reserve to themselves the power to propose ordinances and resolution and to enact or reject the same at the polls independent of the tribal council, but subject to approval of the Secretary of the Interior as required by this constitution and bylaws. The members of the tribe also reserve power at their own option to approve or reject at the polls any action of the tribal council.

Sec. 2. The first power reserved by the members of the tribe is the initiative. Thirty percent (30%) of the registered voters shall have the right by petition to propose amendments to this constitution and bylaws and to propose ordinances and resolutions.

The second power is the referendum which shall be ordered upon a petition signed by thirty percent (30%) of the registered voters.

Sec. 3. Upon receipt of a request for an election in the form of an initiative or referendum petition, the tribal chief shall, after ascertaining that a sufficient number of registered voters have signed, cause to be held an election on the question or issue within sixty (60) days of receipt of said petition; provided, however, that an election on a constitutional amendment must be called by the Secretary of the Interior as provided in Article XIII. Thirty percent (30%) of the registered voters shall constitute a sufficient number of voters under this section.

Sec. 4. Any measures referred to the tribe by the initiative or by the referendum shall take effect and be in force when approval by a majority of the vote cast in such election in which at least forty percent (40%) of the registered voters have voted, except that measures requiring approval of the Secretary of the Interior shall not be effective until approved by him.

Sec. 5. All measures referred to the tribe for approval or disapproval by election shall begin with the words; "Be It Enacted by the Members of the Mississippi Band of Choctaw Indians."

Sec. 6. Referendum or initiative petitions filed under Article XI must be submitted under a cover letter signed by at least three (3) sponsors who are members of the tribe and who are registered to vote in tribal elections. Said cover letter must be signed by the sponsors in the presence of a registered notary public and said petitions must be filed in accordance with a procedure to be established by the tribal council.

## ARTICLE XII - REPEAL AND SAVING CLAUSE

Sec. 1. The constitution and bylaws of the Mississippi Band of Choctaw Indians approved May 22, 1945, and revised in November 28, 1969, under the provisions of the Act of June 18, 1934, as amended, is hereby repealed and superseded by this constitution.

Sec. 2. All ordinances and resolutions heretofore enacted by the Mississippi Band of Choctaw Indians shall remain in full force and effect to the extent that they are consistent with this constitution.

Sec. 3. In the event any sentence, paragraph or section of this constitution and bylaws shall be held unconstitutional or invalid by a Federal court of competent jurisdiction, the remaining sentences, paragraphs or sections shall remain valid and be presumed consistent with the United States Constitution.

#### ARTICLE XIII - AMENDMENTS

This constitution and bylaws may be amended by a majority vote of the qualified voters of the tribe voting at an election called for that purpose by the Secretary of the Interior, provided that at least forty percent (40%) of those entitled to vote shall vote in such election; but no amendment shall become effective until it shall have been approved by the Secretary of the Interior. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment when requested by a sufficient number of qualified voters as provided in Article XI or by the tribal council.

#### BYLAWS OF THE MISSISSIPPI BAND OF CHOCTAW INDIANS

#### ARTICLE I - DUTIES OF TRIBAL COUNCIL OFFICERS

Sec. 1. The vice-chief of the tribal council shall assist the tribal chief when called upon to do so by the chief and, in the absence of the tribal chief, it shall be his duty and responsibility to preside over tribal council meetings.

Sec. 2. The secretary-treasurer of the tribal council shall insure that an accurate record of all transactions of the council is maintained. He shall submit promptly, to the Superintendent of the Choctaw Agency, copies of the minutes, resolutions adopted, and ordinances passed at all regular and special meetings of the tribal council as required by the Secretary of the Interior.

Sec. 3. The secretary-treasurer of the tribal council shall cause to be audited all tribal funds and accounts at least once each year and at such other times as required by the tribal council or by the Secretary of the Interior and shall sign and approve all disbursements of tribal funds (or funds under control of the tribe); he shall also sign and approve all contracts negotiated by the tribal chief on behalf of the tribe unless otherwise provided by the tribal council.

Sec. 4. The secretary-treasurer of the tribal council, and such other officers and employees of the tribe who are responsible for safeguarding tribal resources, shall be bonded and the cost of such bond shall be borne by the tribe. The amount of the bond shall be determined by the tribal council as required by the Secretary of the Interior.

Sec. 5. The secretary-treasurer of the tribal council, by reason of his office, shall preside over such committees as are established by the tribal council on budgetary and financial matters.

## ARTICLE II - MEETINGS

Sec. 1. The tribal council shall hold regular meetings on the second Tuesday in January, April, July, and October of each year. Special meetings of the tribal council

- (a) may be called by the tribal chief when in his judgment they are required.
- (b) shall be called by the tribal chief at the written request of at least nine (9) members of the tribal council or a majority of the council membership, whichever is higher.

The business of special meetings shall be limited to the matters specified in the call.

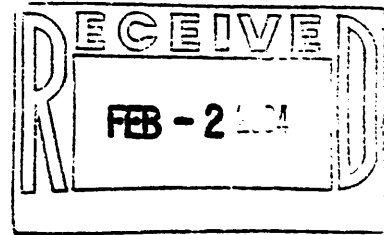
Sec. 2. A majority of the members of the tribal council shall constitute a quorum for the transaction of any tribal business.

Sec. 3. The tribal council in the conduct of its business shall be governed by Robert's Rules of Order.

## ARTICLE III - ADOPTION

This constitution and bylaws, when adopted by a majority vote of the enrolled members of the Mississippi Band of Choctaw Indians voting in a special election called for that purpose by the Secretary of the Interior and in which at least thirty percent (30%) of those persons entitled to vote shall have voted, shall be submitted to the Secretary of the Interior for his approval. The date of such approval shall be the effective date of this constitution and bylaws.

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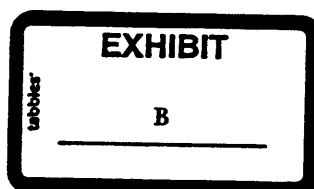


MISSISSIPPI BAND OF CHOCTAW INDIANS  
P.O. Box 6010 - Choctaw Branch  
Philadelphia, Mississippi 39350

## ORDINANCE NO. 56

AN ORDINANCE PROVIDING FOR CLASSIFICATION, REGULATION,  
AND CREATION OF WHOLLY-OWNED TRIBAL BUSINESS ENTERPRISES  
AND ESTABLISHMENT OF BUSINESS ENTERPRISE DIVISION OF  
TRIBAL GOVERNMENT EXECUTIVE BRANCH

November 20, 1997



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MISSISSIPPI BAND OF CHOCTAW INDIANS  
P.O. Box 6010 Choctaw Branch  
Philadelphia, Mississippi 39350

ORDINANCE NO. 56

AN ORDINANCE PROVIDING FOR CLASSIFICATION,  
REGULATION, AND CREATION OF TRIBAL BUSINESS ENTERPRISES  
AND ESTABLISHMENT OF BUSINESS ENTERPRISE DIVISION OF  
TRIBAL GOVERNMENT EXECUTIVE BRANCH

WHEREAS, the Tribal Council of the Mississippi Band of Choctaw Indians is empowered to address the regulation and establishment of Tribal business enterprises; and,

WHEREAS, from time to time the Tribal Council has exercised those powers to authorize creation and regulation of various Tribal business enterprises; and,

WHEREAS, it is now and has always been the intent of the Tribal Council that these wholly owned Tribal business enterprises should operate as and be legally classified as unincorporated enterprises of the Mississippi Band of Choctaw Indians, d/b/a the particular Tribal enterprise, rather than as separate Tribally-chartered corporations; and,

WHEREAS, there is a need to clarify the organizational status of all the Tribe's wholly owned business enterprises to ensure that they receive treatment as non-taxable enterprises of the Tribe and not be confused with or mistaken for separate Tribally-chartered corporations; and,

WHEREAS, there is also a need to divide the Tribal Government Executive Branch into two administrative divisions: a Tribal

Government Services Division and a Tribal Business Enterprise Division, to clearly identify the placement of wholly-owned tribal business enterprises within the Constitutional structure of the Tribal Government and to authorize certain limited delegations of Constitutional authority to achieve the purposes of this Ordinance.

WHEREAS, there is also a need to provide a streamlined method for establishing new Tribal business enterprises, for authorizing new lines of business for existing Tribal business enterprises, and to avoid unnecessary duplication or confusion as to the organizational status of such enterprises.

NOW, THEREFORE, BE IT ORDAINED:

Section 1. Effect of Ordinance on Enterprise Charters and Structure of Tribal Government Executive Branch. This Ordinance supersedes all existing organizational documents or charters for the Tribal business enterprises identified in Sections 2, 3 and 4, effective the date of enactment of the Ordinance. All prior charters for the enterprises identified in Sections 2, 3, and 4 are hereby vacated and are now null and void. Special provisions regarding the future operation of the enterprises identified in Sections 2 and 3 are set out in those Sections of this ordinance. Special provisions regarding termination of the enterprises identified in Section 4 are set out in that Section of this ordinance. Changes in the structure of the Tribal Government Executive Branch, and certain limited delegations of Constitutional powers to the enterprise boards, pursuant to this ordinance are addressed in Section 29 of this ordinance. These changes were made

in recognition of the need to provide an effective separation between the policies and procedures applicable to Tribal Government Services functions and Tribal Business Enterprise operations.

Section 2. Continuation of Ongoing Tribal Enterprises under Business Enterprise Division of Tribal Government Executive Branch. The Tribal business enterprises identified below are hereby determined to be going concerns and are hereby acknowledged to have an uninterrupted and continued operational existence as unincorporated enterprises of the Tribe, but henceforth shall be operated from the Business Enterprise Division of the Tribal Government Executive Branch pursuant to this Ordinance:

- (1) Chahta Enterprise
- (2) Choctaw Development Enterprise
- (3) First American Printing and Direct Mail is the tribal entity in the 51% tribally-owned joint venture (with a third party), d/b/a First American Plastics.
- (4) Choctaw Manufacturing Enterprise
- (5) Choctaw Golf Enterprise
- (6) Choctaw Residential Center Enterprise
- (7) Choctaw Construction Enterprise
- (8) Choctaw Shopping Center Enterprise

Section 3. Transfer of Some Former Tribal Business Enterprises to Tribal Government Services Division of Tribal Government Executive Branch. All functions, obligations, assets and liabilities of those Tribal business enterprises listed below have heretofore been or shall hereinafter be administered by the

Tribal Government Services Division of the Executive Branch under the Office of the Tribal Chief, Administration Department:

- (1) Choctaw Housing Development Enterprise
- (2) Choctaw Forest Products Enterprise
- (3) Choctaw Transit Authority

The existing boards for the enterprises identified in this Section 3 are hereby abolished. All personnel, financial, contract, loan, and administrative functions regarding these enterprises shall continue to be or shall henceforth be handled within the Tribal Government Services Division of the Executive Branch and pursuant to the Tribe's taxpayer identification number/employer identification number and in accordance with the policies and procedures otherwise applicable to programs administered by the Tribal Government Services Division of the Executive Branch.

Section 4. Termination of Non-Functioning Tribal Enterprises.

Those Tribal business enterprises shown below presently exist only on paper, and are not in fact operational. Those enterprises have no employees, no assets and no liabilities and have heretofore been, or are hereby, terminated. Their initial authorizing ordinances or charters are hereby repealed and are now null and void:

- (1) Choctaw Consumer Cooperative Enterprise
- (2) Choctaw Telephone Company
- (3) Choctaw Cattle Enterprise
- (4) Choctaw Wood Sawmill Enterprise

- (5) Choctaw Technology Enterprise
- (6) Choctaw Greetings Enterprise
- (7) Choctaw Food Service Enterprise
- (8) Choctaw Elderly Care Center Authority

Section 5. Continuation of Boards For Ongoing Tribal Enterprises. Except as provided in Section 11(d) of this Ordinance, all Tribal business enterprises identified in Section 2 shall continue to operate under the same enterprise boards and with the same number of board members as were established in prior ordinances or resolutions of the Tribal Council for each such enterprise and for the same terms of office for the existing board members.

Section 6. Affirmation of Existing Legal Obligations.

(a) All rights, obligations, contracts, leases, loan arrangements, assets and liabilities listed in the books and records of the existing Tribal business enterprises identified on Sections 1, 2 and 3 are hereby reaffirmed on the same terms and conditions as set forth in any existing authorized third-party contracts and/or in any existing authorized entries located in the books and records of each such enterprise.

(b) The Mississippi Band of Choctaw Indians hereby reaffirms all previously authorized enterprise contracts, leases, loans, partnerships or joint venture arrangements, and other enterprise business arrangements now in force, and agrees to guarantee and stand behind them on the same terms and conditions and subject to the same qualifications as pre-existed this Ordinance. No

creditors, lenders, employees, or contract parties shall be adversely affected by this Ordinance as to any pre-existing rights and obligations and all shall have the same rights and obligations respecting authorized contracts and arrangements entered into in the name of said enterprises as before its enactment.

Section 7. Employee Classifications and Retirement Plans.

(a) Tribal employees shall participate in either the MBCI Tribal Government Enterprise 401(k) Plan or the MBCI Tribal Government Services 401(k) Plan, depending upon whether they shall in future be classified as Tribal Government Enterprise employees or as Tribal Government Services employees, all subject to final federal government approval and determination as to qualification of the said plans.

(b) Rights and restrictions respecting employee benefits, classifications, salaries, wages, or other personnel matters applicable to employees who voluntarily transfer or are involuntarily transferred from one duty station to another within the Tribe shall be addressed in the applicable tribal government services or tribal government enterprise personnel policies, 401(k) plan documents or other tribal council resolutions or ordinances.

Section 8. Use of Tribal Taxpayer Identification Numbers for Ongoing Enterprises. All the Tribal business enterprises identified in Section 2 shall operate under the taxpayer identification number/employer identification number of the Mississippi Band of Choctaw Indians, to-wit: 64-0345731. To the extent any such wholly owned business enterprise is now operating

under a different taxpayer identification number/employer identification number, each such enterprise shall forthwith commence using the Tribe's taxpayer identification number/employer identification number for all federal/state reporting requirements. This transition shall be completed within 90 days of enactment of this Ordinance and shall be coordinated through the Tribal Comptroller's office.

Section 9. Establishment of New Tribal Enterprises and Use of Tribal Taxpayer Identification Number.

(a) All new wholly-owned enterprises which will operate under separate boards shall be authorized and established pursuant to this general Ordinance rather than by separate Ordinance. All new Tribal business enterprises shall operate under the taxpayer identification number/employer identification number of the Mississippi Band of Choctaw Indians, to wit: 64-0345731 and all new wholly-owned Tribal business enterprises shall operate as and be classified as unincorporated enterprises of the Tribe, and shall operate from the Tribal Business Enterprise Division of the Executive Branch pursuant to this ordinance.

(b) When the Tribal Council is ready to authorize establishment of any new Tribal business enterprises to be wholly owned by the Tribe pursuant to this Ordinance, a resolution so stating and incorporating by reference this Ordinance shall be enacted setting forth the name and business purpose of the enterprise, naming its initial board and their terms of office. All other terms and conditions for the operation of that enterprise

shall be addressed by reference to this Ordinance, which shall be incorporated by reference in the enacting resolution, except to the extent the Council finds a need to include any other special provisions consistent with this Ordinance or otherwise provides for operation of the enterprise by management contract with or without an enterprise board. The standard form of resolution attached hereto as Appendix A shall be used for initiating new tribal business enterprises which will operate with an enterprise board pursuant to this Ordinance. Nothing in this ordinance shall be construed to prevent the Tribal Council from acting by separate general or other ordinance to charter non-profit membership corporations or other for-profit corporations that are not wholly-owned Tribal entities, from establishing a general ordinance for the issuance of various forms of corporate charters, or from acquiring or holding stock or other forms of equity in state, Tribal or federally chartered corporations, limited liability companies or other forms of business wherever situate.

Section 10. Special Provisions for Tribal Involvement in Joint Ventures or Partnerships.

(a) Where the Tribe enters into a joint venture or partnership arrangement with a third party and federal law or regulations require that a separate taxpayer identification/employer identification number be obtained and used for information or tax reporting by the said joint venture or partnership, a separate taxpayer identification/employer identification number shall be obtained for the joint venture or



partnership by or through the Tribal Chief's office. However, in such cases the Tribe shall use the Tribe's taxpayer identification/employer identification number, to-wit: 64-0345731 to carry out any information or tax reporting obligations required of the Tribe as a partner or co-venturer.

(b) Existing, duly authorized joint venture agreements involving the Tribe or tribal enterprises are not affected by this ordinance.

Section 11. Minimum Organizational Requirements and Operating Procedures. All wholly-owned Tribal business enterprises which shall continue to operate or which shall in future be authorized to operate after enactment of this Ordinance (including those enterprises identified in Section 2 of this ordinance) shall hereafter operate in conformity with the following minimum organizational requirements and operating procedures. These requirements and procedures do not apply to the enterprises identified in Section 3, except for the provisions of Section 11(d).

Enterprise Organizational Requirements  
and Operating Procedures

(a) Name. The name of any new tribal business enterprise established pursuant to this Ordinance shall be as set out in the authorizing resolution for that enterprise. The existing enterprises identified in Section 2 shall continue to use the names there shown. On all enterprise contracts, notes, leases, or other legal instruments the enterprise shall be identified as "The

Mississippi Band of Choctaw Indians, d/b/a [enterprise name]."

The enterprise name may be used without the d/b/a reference in advertisements, marketing materials, letterheads, etc., but all such communications shall also identify the enterprise as an "enterprise of" or a "development of" the Mississippi Band of Choctaw Indians.

(b) Authorized Purposes. Each tribal enterprise shall be empowered to operate in furtherance of their authorized purposes as heretofore established by or as may in the future be established by the Tribal Council. The existing authorized purposes of the enterprises identified in Section 2 of this ordinance are set out on Appendix B hereto.

(c) Contracting and Operational Authority. Each tribal business enterprise shall be operated by and overseen by an enterprise board which shall exercise the powers herein enumerated. For the enterprises identified in Section 2, the enterprise boards shall continue in their present forms and with their present memberships, except as provided at Section 11 (d) and (e). The authorized purpose and any special powers or duties of each new tribal enterprise shall be as set out in the future resolution authorizing such new enterprise. No contract entered into in violation of the provisions of this Ordinance shall be binding upon the Mississippi Band of Choctaw Indians unless thereafter expressly ratified by resolution of the Tribal Council.

(d) Enterprise Board Membership and Term.

1) The existing board members and existing staggered terms of office for the boards of the enterprises identified in Section 2 shall continue under the same procedures and on the same schedules as established for said enterprises prior to enactment of this Ordinance, except as follows:

(i) all Board Members terms for existing enterprises which are not already on a four-year staggered term basis, shall be converted to a four-year staggered term basis as the existing terms of office expire.

(ii) Upon the effective date of this ordinance, the Tribal Chief then in office shall automatically be designated Chairman of each existing enterprise board and the Tribal Secretary-Treasurer then in office shall automatically be designated as Treasurer of each existing enterprise board for the duration of their terms in said Tribal offices.

(iii) The boards for the following enterprises previously had more than five (5) board members: Chahta Enterprise and Choctaw Construction Enterprise. The number of board members for said enterprises shall be and hereby are reduced to five (5), including the board positions held by the Tribal Chief and the Tribal Secretary-Treasurer. Notwithstanding any other provision of this Ordinance, the existing seven (7) member Board for Choctaw Residential Center Enterprise shall not be reduced in number at this time.

(iv) The board composition and terms of office for each board for the enterprises identified in Section 2 of this ordinance shall initially be as set out on Appendix C to this ordinance. These board positions may be reassigned by the Tribal Council on recommendation of the Tribal Chief after consultation with the Tribal Council Committee on Budgets and Finance and the Tribal Council Committee on Economic Development. This consultation and recommendation process shall be completed within six (6) months of enactment of this ordinance.

(v) Any other special rules or requirements heretofore established for board membership for said enterprise shall likewise continue in force until and unless changed by the Tribal Council.

2) The number of board members for all new tribal business enterprises shall be specified by the Tribal Council in the authorizing resolution for that new enterprise. New enterprise boards shall not exceed five (5) persons, including the Tribal Chief and the Tribal Secretary-Treasurer. See form of resolution at Appendix A. The members of all such boards shall be appointed by the Tribal Council based upon recommendations submitted through the Office of the Tribal Chief after consultation with the Tribal Council Committee on Economic Development and the Tribal Council Committee on Budgets and Finance.

3) The Tribal Chief then in office shall automatically be designated Chairman of each new enterprise board and the Tribal Secretary-Treasurer then in office shall automatically be designated Treasurer of each new enterprise board for the duration of their terms in said Tribal offices. To established staggered terms, the other board members shall be appointed to either initial four-year terms ending at the close of the fourth year of their terms, or initial two-year terms, ending at the close of the second year of their terms, as determined by the Tribal Council in the authorizing resolution for that new enterprise. Thereafter, the Council shall appoint all of the other members to terms of four years, based upon recommendations submitted through the Office of the Tribal Chief, as those terms expire. Board member shall otherwise retain their positions until their successors have been duly appointed.

(e) Vacancies and Removal.

(1) In the event of a vacancy occurring on an enterprise board for any reason, the vacancy shall be filled by the Tribal Council based on recommendations from the Office of the Tribal Chief after consultation with the Tribal Council Committee on Economic Development and the Tribal Council Committee on Budgets and Finance for the remainder of the term, subject to the requirements of part (d)(1) for those enterprise board positions which the Tribal Chief and the Secretary-Treasurer of the council automatically fill

(2) If there is a change for any reason in the persons holding the Office of Tribal Chief or the Office of the Secretary-Treasurer of the Tribal Council, creating a vacancy on the enterprise boards, the persons succeeding to those tribal offices shall automatically fill those vacancies for the duration of their positions as Chief and Secretary-Treasurer respectively and shall likewise automatically assume the positions of Chairman and Treasurer on the affected enterprise boards simultaneously with their succession to said tribal offices.

(3) Other board members may be removed by a majority vote of the Tribal Council at a meeting at which a quorum is present only for failure to attend at least one-half of scheduled meetings during any 12-month period or for other just cause.

(f) Quorum and Voting. A majority of the board members then in office shall constitute a quorum, with all matters to be determined by a majority vote in accordance with such procedures regarding quorums, voting, powers and telephonic meetings as shall be set out in the Board's operational policies/procedures approved by the Tribal Council pursuant to Section 12 or as otherwise set out in the authorizing resolution.

(g) Powers of the Board. The following powers and authorities are hereby delegated to the enterprise boards, subject to the terms and conditions set forth in this Ordinance.

1) to purchase, take by lease, sublease, gift, bequest, or otherwise acquire, own, hold, manage, operate, encumber, sublease, and dispose of personal property of every

description where such purchase, lease, acquisition or disposition is (i) (A) consistent with enterprise purposes, (B) within the enterprises' approved capital or operating budgets, and (C) can otherwise be accomplished with funds in an approved enterprise budget and without encumbering other tribal funds or other tribal property, or (ii) has otherwise been specifically authorized by the Tribal Council; provided that the board shall have no authority to purchase, transfer, or encumber any real property in absence of a specific ordinance or resolution by the Tribal Council allowing the enterprise to acquire or dispose of real estate.

2) (i) subject to the approval of the Tribal Council, each enterprise board may borrow money and enter other financing and credit arrangements for enterprise purposes and grant security interests in enterprise accounts, equipment or other personal property held in the name of the enterprise and to pledge a percentage of enterprise revenues as security for such financings, where required. For all such loan, credit, or pledge transactions, the enterprise board shall from time to time make an initial determination of the amount of loan, credit, or pledge authority needed and the terms thereof, whether on an annual basis, on a loan by loan basis or otherwise, and shall submit the same for Tribal Council approval through the Office of the Tribal Chief.

(ii) The Tribal Council shall make the final decision as to the amount and terms of all enterprise loans, pledges, or

lines of credit; provided that all submissions to the Tribal Council regarding loans, pledges, and lines of credit shall be deemed approved if not acted on by the Tribal Council within 30 days of submission to the Tribal Council.

(iii) Enterprise boards shall have no ability to pledge, encumber or use tribal assets, enterprise revenues or enterprise personal property, as security for any enterprise indebtedness, unless approved by the Tribal Council through the enterprise budget process or otherwise.

(iv) All prior actions of the Tribal Council to establish borrowing limits or limits on pledges of enterprise revenues by percentages or otherwise, or to approve prior loan, credit, or pledge arrangements, or approving limited or general waivers of sovereign immunity for existing tribal business enterprises, are hereby extended and shall remain in full force and effect.

3) to hire and terminate an executive officer or manager and provide for the employment of necessary staff and personnel and to delegate authority to such officers and other personnel as may be reasonably necessary for the operation of the enterprise.

4) to establish personnel policies and equitable wage and salary programs and to adopt and maintain employee welfare, benefit, and other incentive programs for personnel employed by the Tribe at the enterprise, except that for any employee benefit plans or policies which the Tribal Council



may from time to time require to be made uniformly applicable to all tribal employees, the enterprise board shall not approve any employee benefit plans or policies having different terms and conditions than the uniform tribal plan or policy. All tribal enterprise employees shall be eligible to participate in the MBCI Tribal Government Enterprise 401(k) Plan or any successor qualified plan, after meeting the eligibility requirements, subject to the terms and conditions set out in said plan.

5) to make and perform contracts and agreements for goods or services with any person, association, partnership, corporation, municipality, county, state, Indian tribe or tribal enterprise, or with the United States for any work reasonably related to the enterprise's authorized purposes and including contracts to employ accountants and legal counsel, provided that enterprise legal counsel must be selected from a list of attorneys approved by the Tribal Council from a list to be submitted through the Office of the Tribal Chief. Unless otherwise authorized by the tribal council, contracts executed by or on behalf of the board must be satisfied with revenues of the enterprise without encumbering general Tribal funds or property.

6) to deposit to the credit of the Mississippi Band of Choctaw Indians, d/b/a the enterprise, funds generated by, assigned to, or borrowed by the enterprise in fully-insured accounts of any institution the deposits of which are insured

by an agency of the federal government, subject to the Tribal funds collateralization requirements set out in Resolution CHO 01-96, and any amendments thereto, and other tribally established guidelines for investment of tribal funds and to expend such funds in accordance with the purposes set forth in this ordinance, the enterprise's authorizing resolution and budgets approved by the Tribal Council or authorized amendments thereof.

7) The enterprise shall not initiate any lawsuit in any court without first securing advance written approval of the Tribal Chief for such lawsuit. Upon receiving notice of any lawsuit against the enterprise, the enterprise CEO shall immediately notify the Office of the Tribal Chief and the Office of the Tribal Attorney General of said lawsuit, shall promptly provide them a copy of any complaint served and shall promptly consult legal counsel on how best to respond to said lawsuit.

8) to enter into joint venture or partnership agreements with third parties or to acquire stock or other equity ownership or investment in other companies, upon first securing Tribal Council approval.

9) to commence new lines of business, provided that the board shall not commence any new line of business which will involve any significant investment or credit financing or which will involve production or services not reasonably related to the enterprise's authorized purposes without first

securing Tribal Council approval. The existing authorized purposes of the enterprises identified in Section 2 of this ordinance are set forth in Appendix B to this ordinance. The authorized purposes for new wholly-owned tribal enterprises established pursuant to this ordinance shall be as set out in their initial authorizing resolution, or amendments thereto.

10) to engage in any lawful business or activity reasonably related to the purposes for which the enterprise is created, subject to the requirements of this ordinance.

11) to exercise such further incidental powers not inconsistent with applicable laws, regulations, tribal ordinances or resolutions as may be necessary to the conduct of enterprise business.

Section 12. Other Enterprise Board Operational Policies/Procedures. Each enterprise board shall develop and present through the Office of the Tribal Chief for Tribal Council approval proposed board operational policies/procedures for the enterprise consistent with this Ordinance. These policies/procedures shall at minimum address election and removal of officers other than the Board Chairman and Treasurer, quorum and voting, establishment of committees of the board, and procedures for notice of regular and special meetings, etc. Once approved by the Tribal Council, the operational policies/procedures of the enterprise board may not be amended without review and approval of the amendment or amendments by the Tribal Council. All "bylaws" for existing enterprises set out in Section 2 shall be revised to

for existing enterprises set out in Section 2 shall be revised to conform to this ordinance and submitted for Tribal Council approval as board operational policies/procedures within 60 days of the date of enactment of this Ordinance.

Section 13. Nonwaiver of Sovereign Immunity. The Mississippi Band of Choctaw Indians hereby retains its sovereign immunity, and nothing contained in this Ordinance shall be construed as a waiver of the tribe's sovereign immunity, nor as authorization for any enterprise board to waive the Tribe's sovereign immunity. No enterprise board has or shall have any power or authority to waive the sovereign immunity of the Mississippi Band of Choctaw Indians or any of its divisions or enterprises or to pledge or encumber any Tribal Assets or revenues without approval of the Tribal Council. The property and assets of individual tribal members shall in no event be subjected to any claim or levy for any liabilities or debts of the Tribe.

Section 14. Enterprise Budgets.

(a) Submission of Proposed Annual Operating Budget

1) Each tribal enterprise shall not less than sixty days before the close of its fiscal year submit to the Office of the Tribal Chief a proposed operating budget for the next fiscal year. The Office of the Tribal Chief shall within thirty days of receipt of said proposed budget, schedule a Tribal Council meeting and request Tribal Council action on the proposed budget in accordance with the Tribal Council's Committee review and scheduling procedures

2) The proposed annual operating budget shall identify the proposed fixed costs and the proposed variable (or production) costs of the enterprise and the proposed sources of funds for the operating budget in such detail as the Tribal Council may from time to time require. Tribal Council approval of the variable cost budget shall be deemed authorization for the enterprise to incur and pay increased variable costs from enterprise revenues or other funds retained by the enterprise pursuant to the budget process, to respond to business opportunities, to otherwise react to supply and demand or other market forces, or to meet other external changes in the cost of doing business during the next fiscal year.

(b) Submission of Capital Budgets.

1) Budgets and justifications for expansion or retooling of enterprise production capability, acquiring other companies or facilities, or to carry out other capital acquisitions not previously authorized by the Tribal Council may be presented to the Office of the Tribal Chief by the enterprise boards on an as-needed basis at any time during any year, or shall otherwise be presented together with the enterprise's annual operating budget submission as the capital acquisition needs of the enterprise may determine. The Office of the Tribal Chief shall within thirty days of receipt of said proposed budget, schedule a Tribal Council meeting and request Tribal

Council action on the proposed budget in accordance with the Tribal Council's Committee review and scheduling procedures.

2) This budget shall identify the proposed capital expenditures and sources of funds from which the enterprise proposes to pay the enterprise's projected capital costs in such detail as the Tribal Council may from time to time require.

(c) All submissions to the Tribal Council regarding enterprise budgets shall be deemed approved by the Tribal Council if not acted on by the Tribal Council within thirty days of submission to the Tribal Council. This procedure applies to both "Operating Budgets" and "Capital Budgets".

Section 15. Financial Records, Audits, and Year End Financial Report.

(a) The boards of each enterprise shall (1) maintain accurate and complete records of the financial affairs of the enterprise in accordance with generally accepted accounting principles, (2) cause an annual audit of the enterprise's financial affairs to be conducted by a certified public accountant in accordance with generally-accepted auditing standards, consistently applied, (3) furnish an annual year-end balance sheet, fiscal year income statement and fiscal year statement of cash flow, and (4) submit through the Office of the Tribal Chief a complete year end report of the financial affairs of the enterprise to the Tribal Council within five months of the close of the enterprise fiscal year.

(b) In each operating year, the Office of the Tribal Chief shall make this year-end report to the Council on each enterprise after receiving the prior year's audit and before that enterprise's annual operating budget submission for the next fiscal year.

(c) The enterprise audit requirement set out above may be satisfied through completion of an audit pursuant to the Federal Single Audit Act procedure set out in 31 U.S.C. § 7501 and submission thereof to the Tribal Council.

Section 16. Bank Accounts.

a) All enterprise checks shall be signed by, and in the name of, the Tribal Chief and the Tribal Treasurer, either by direct signature or by authorized facsimile thereof. Such facsimile signature plates shall also contain an imprint for that particular enterprise so that any imprints made therefrom shall print the signature and title of the Tribal Chief, the Tribal Treasurer, and the name of the enterprise. Each enterprise board may also require an additional manual or facsimile signature of an enterprise manager or CEO on said checks, but is not required to do so.

2) All bank accounts for Tribal business enterprises shall likewise be established in the name of "The Mississippi Band of Choctaw Indians, d/b/a [the enterprise name]," with the Tribal Chief and Tribal Treasurer being authorized signatories thereon, provided that each enterprise board may authorize additional (supplemental) signatories for said bank accounts as set out above.

Section 17. Tax Reporting and Compliance. Each Enterprise Board shall have the responsibility for ensuring the proper remittance and reporting of appropriate payroll and withholding taxes to the Tribal Chief's Office in order to facilitate the timely remittance and reporting to the appropriate taxing authorities. The Tribal Chief or his designee shall have the authority to request and require submission of information from Tribal Enterprises as may be deemed necessary to properly comply with Federal, Tribal or other Tax Laws.

Section 18. Board Compensation. Members of the enterprise board shall not be paid for their services to the enterprise, nor shall any of those members hold any paid position as an employee, agent, or consultant of the enterprise; provided, however, that the enterprise may reimburse board members for expenses on behalf of the enterprise and provide a fixed amount per board meeting or per Board Committee meetings in an amount to be determined by the Tribal Council on an annual basis by resolution. This stipend approval process may be completed separately from or as a part of the annual budgeting process.

Section 19. Insurance.

The Tribal Chief or his designee shall consult with the Tribal Secretary-Treasurer, with each enterprise board, and with the Tribal Council Committee on Budgets and Finance and obtain such insurance coverages, including, but not limited to liability, casualty, and fidelity bonding for the enterprise and its officers through appropriate riders or endorsements on the Tribe's insurance



policies. Premiums for all insurance coverages for a particular enterprise shall be charged back to such enterprise.

Section 20. Indian Preference.

1) The enterprise shall to the maximum extent feasible adhere in regard to recruitment, employment, reduction in force, promotion, training, and related employment actions to a publicly announced policy and practice of extending preferential treatment to members of the Mississippi Band of Choctaw Indians ("Mississippi Choctaws").

2) The enterprise shall to the maximum extent feasible further implement and maintain an aggressive program of recruiting, training, and upgrading Mississippi Choctaw employees, and, to the extent that funds are available, shall provide pre-employment and pre-promotion training for qualified Mississippi Choctaw applicants in furtherance of the goal of insuring maximum Mississippi Choctaw employment and participation in all levels of the management, operation, and work force of the enterprise.

3) Notwithstanding parts (1) and (2) of this section, the enterprise is empowered to employ non-members when no qualified Mississippi Choctaw tribal members can be recruited, trained, or upgraded to fill a given job vacancy within a reasonable period of time at a reasonable cost consistent with business necessity.

Section 21. Duration and Termination. The period of existence of each enterprise shall be perpetual, but may be

terminated by the Tribal Council at any time when such termination is found by the Tribal Council to be in the best interest of the Tribe. In the event the enterprise is terminated, all legal and valid financial obligations of the enterprise will be met and the remaining assets of the enterprise will be retained by the Mississippi Band of Choctaw Indians and any cash proceeds deposited into the Tribe's general fund. Thereafter, such funds and assets may be spent or invested by the Tribal Council for the social and economic betterment of the Mississippi Band of Choctaw Indians.

Section 22. Indemnity. All past, present, or future board members of tribal enterprises shall be indemnified by the Tribe for actual losses, expenses, costs of defense, or liabilities incurred in connection with any claim or suit brought against the board member for alleged negligent or wrongful conduct while providing service to the enterprise; provided, however that no board member shall be indemnified in connection with any claim or liability arising out of the board member's own willful misconduct, bad faith, or conduct outside the scope of his authorized powers or duties set forth in this Ordinance, and provided further that this indemnity shall apply only to the extent that insurance coverage does not otherwise adequately indemnify or make the Board member whole.

Section 23. Conflict of Interest. No board member shall vote on or in any other manner participate in any matter or decision in which he, or any member of his immediate family (i.e., spouse, parent, child, or person claimed as a dependent for federal income

tax purposes), shall have a direct personal financial interest. Such a board member, however, shall be counted for purposes of determining a quorum. However, this provision shall not preclude a board member from voting on any proposed change in employee wage scales or benefits packages applicable to all enterprise employees.

Section 24. Minutes. Each of the Enterprise Board shall keep minutes of its official business as permanent business records to be kept in the offices of the enterprise. Such minutes shall be made available for review and inspection by Tribal Council upon request by the Tribal Chief.

Section 25. Avoidance of Duplication. To avoid unnecessary proliferation of separate enterprise boards, the Council intends that due consideration shall be given in the future to the prospect of administering new lines of business under one or more of the existing enterprises as appropriate rather than by continued initiation of separate enterprises with separate boards to the extent feasible.

Section 26. Special Provisions For Choctaw Development Enterprise. The Tribal Council hereby converts the Choctaw Development Enterprise from a membership corporation to an unincorporated enterprises of the tribal government which shall have the same status as the other enterprises identified in Section 2 of this Ordinance. Because the existing members of the Enterprise paid a \$1 annual membership fee to become members, the Tribal Council hereby authorizes and directs the Tribal Chief to reimburse \$1 to all existing members of the Choctaw Development

Enterprise and provide them a "certificate of appreciation" for their role in advancing the interests of the Choctaw Development Enterprise. The existing enterprise board members for the Choctaw Development Enterprise will continue in office for the duration of their present terms. Thereafter, those board positions will be filled by the Tribal Council in accordance with Section 11(d) of this Ordinance.

Section 27. Special Provisions for Choctaw Housing Authority.

The Choctaw Housing Authority is a tribally-chartered instrumentality of the Mississippi Band of Choctaw Indians established as a not-for-profit corporation to carry out public housing functions. The Housing Authority (as a separate corporation) utilizes a separate taxpayer identification number/employer identification number. This Ordinance does not affect that status and the Housing Authority shall continue to operate under its existing charter unaffected by this Ordinance until and unless there is further Council action addressing the status of the Housing Authority pursuant to the Native American Housing Assistance & Self-Determination Act of 1996, Pub. L. 104-330, or otherwise.

Section 28. Special Provisions for Silver Star Resort and Casino.

(a) The Silver Star Resort and Casino is an unincorporated enterprise of the Mississippi Band of Choctaw Indians administratively located within the Tribal Government Executive Branch. The resort and casino are wholly-owned developments of the

Tribe and are currently operated without a separate board pursuant to a management contract and a state-tribal compact approved by the Secretary of the Interior pursuant to 25 U.S.C., § 2701, et. seq. Nothing in this Ordinance shall be construed to alter the management and operational requirements of the Silver Star Resort & Casino pursuant to said compact and management contract. However, after enactment of this ordinance, the Silver Star Resort and Casino shall be administratively located within the Tribal Business Enterprise Division of the Tribal Government Executive Branch.

(b) The Silver Star Resort & Casino has in the past reported certain covered tribal gaming revenues for federal excise purposes through a tribal taxpayer identification number (#58-2156629) which is different from the regular tribal taxpayer identification number (#64-0345731). Commencing within the time frames set out in Section 8 of this ordinance, if any tax reporting is required by the Tribe at any point in connection with the Silver Star Resort and Casino, the Tribe's regular taxpayer identification number shall be used (#64-0345731).

Section 29. Separation of Tribal Government Executive Branch into Government Services Division and Business Enterprise Division: Limited Delegations of Authority. In order to provide for an effective separation between the policies and procedures applicable to Tribal Government Services functions and Tribal Business Enterprise operations within the Tribe's Constitutional governmental structure, the Tribal Government Executive Branch is

hereby divided into two (2) different divisions under the Office of the Tribal Chief.

One division (the Tribal Government Services Division) will contain all existing operations and departments of the Executive Branch, except the business enterprises identified in Section 2 of this Ordinance and the Silver Star Resort and Casino.

The other division (the Tribal Business Enterprise Division) will contain all Tribal business enterprises identified in Section 2 of this Ordinance, the Silver Star Resort and Casino and other wholly-owned Tribal business enterprises established in the future under this ordinance.

The provisions made in this ordinance for a board of directors to oversee each enterprise within the Executive Branch have been authorized through limited delegations of certain of the Tribal Council's powers and limited delegations of certain of the Tribal Chief's powers to these Boards. This was done in recognition of the different operational and management needs of the Tribe's business enterprises as compared to its regular Government Services functions. No amendment to this ordinance which alters or impinges upon the limited delegations of power from the Tribal Chief to these Boards shall be effective unless approval by the Tribal Chief in writing. Likewise, the Tribal Chief shall not make any change in the operations of the Tribal Business Enterprise Division of the Executive Branch which alters or impinges upon the limited delegations of power from the Tribal Council to these Boards without written Tribal Council approval.

Section 30. Effective Date. BE IT FURTHER ORDAINED that this Ordinance shall become effective from and after the date of its enactment by the Tribal Council.

#### CERTIFICATION

I, the undersigned, as Secretary-Treasurer of the Mississippi Band of Choctaw Indians, certify that the Tribal Council of said Band is composed of 16 members, of whom 14, constituting a quorum, were present at a special-called meeting thereof, duly called, noticed, convened, and held this 20th day of November, 1997; and that the foregoing Ordinance was duly enacted by a vote of 14 members in favor, 0 opposed, and 0 abstaining.

DATED this 20th day of November, 1997.

ATTEST:

Phillip Martin  
CHIEF

Howard Bell  
SECRETARY-TREASURER

#### CONFIRMATION OF LIMITED DELEGATION OF CONSTITUTIONAL POWER BY THE TRIBAL CHIEF

I, Phillip Martin, Tribal Chief, Mississippi Band of Choctaw Indians, do hereby confirm my approval of and my decision to make the limited delegations of Constitutional Executive power to the enterprise boards on the terms and conditions set forth in this Ordinance.

01/05/98  
Date

Phillip Martin  
Phillip Martin, Tribal Chief

## Appendix A

### STANDARD FORM RESOLUTION FOR ESTABLISHMENT OF NEW TRIBAL BUSINESS ENTERPRISES

WHEREAS, the Tribal Council of the Mississippi Band of Choctaw Indians is empowered to address the regulation and establishment of Tribal business enterprises under Article VIII, Section 1(h), (j) and (o) of the Tribal Constitution and Bylaws; and,

WHEREAS, the Tribal Council has heretofore exercised those powers to enact Tribal Ordinance No. 56, "An Ordinance Providing for Classification, Regulation and Creation of Tribal Business Enterprises;" and,

WHEREAS, said Ordinance sets out the procedure by which new tribal business enterprises are to be established and operated as unincorporated divisions of the Tribe; and,

WHEREAS, the Tribal Council has determined that there is a need to establish a new wholly-owned tribal business enterprise for the purposes set out below,

NOW, THEREFORE, BE IT RESOLVED:

1. A new tribal business enterprise is hereby established which shall be known as the Mississippi Band of Choctaw Indians, d/b/a [here insert name].

2. The new tribal business enterprise is hereby established for the following authorized purposes:

[here insert purposes]

3. The initial board for this new enterprise shall consist of:

<u>Board Member</u>	<u>Initial Term</u>	<u>Term Expires</u>
Tribal Chairman	For duration of term as Tribal Chief	End of term as Tribal Chief
Secretary/Treasurer	For duration of term as Secretary/Treasurer of Tribal Council	End of term as Secretary/Treasurer of Tribal Council
Other Board Positions	Mix of 4-year and 2-year terms as needed to create stagger	End of term



4. The Tribal Chief is hereby designated as the initial Board Chairman and the Secretary/Treasurer of the Council is hereby designated Board Treasurer.

5. All other organizational requirements and procedures for this new business enterprise shall be governed by Tribal Ordinance No. 56.

BE IT FURTHER RESOLVED that this Resolution shall become effective from and after the date of its final approval by the Tribal Council.

#### CERTIFICATION

I, the undersigned, as Secretary/Treasurer of the Mississippi Band of Choctaw Indians, certify that the Tribal Council of said Band is composed of 16 members, of whom 16, constituting a quorum, were present at a regular meeting thereof, duly called, noticed, convened, and held this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_; and that the foregoing Resolution was duly enacted by a vote of \_\_\_\_\_ members in favor, \_\_\_\_\_ opposed, and \_\_\_\_\_ abstaining.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

TEST:

\_\_\_\_\_  
CHIEF

\_\_\_\_\_  
SECRETARY-TREASURER

## Appendix B

Existing tribal business enterprise which will continue operation under their existing boards, but under the Tribal Business Enterprise Division of the Tribal Government Branch pursuant to the new enterprise Ordinance:

1. Chahta Enterprise - Authorized Purpose: To engage in the business of manufacturing and selling automotive and non-automotive wire harnesses, wiring assemblies and related products, including electrical wiring.
2. Choctaw Development Enterprise - Authorized Purpose: To engage in the business of residential, commercial, and institutional construction on a contract basis as a general contractor or subcontractor both on and off the Choctaw Indian Reservation.
3. First American Printing and Direct Mail Enterprise - Authorized Purpose: To engage in the business of manufacturing and selling (a) publishing and distribution of information, (b) data processing services, (c) telemarketing (incoming and outgoing) services, (d) direct mail services, and (e) commercial art services.

NOTE: First American Printing and Direct Mail Enterprise is the tribal party in a 51% tribally-owned joint venture with a third party (Quad, Inc.). This joint venture is named First American Plastic Molding Enterprise d/b/a First American Plastics.

4. Choctaw Manufacturing Enterprise - Authorized Purpose: To engage in the business of manufacturing and selling electrical components, wiring assemblies, p.c. boards, and related products involving electrical wiring or computer components.
5. Choctaw Golf Enterprise - Authorized Purpose: To market and operate the Dancing Rabbit Golf Club, golf course, and related on-site facilities.
6. Choctaw Residential Center Enterprise - Authorized Purpose: To provide long-term (residential) care for intermediate and skilled care patients, including all required nursing, social, psychological, dietary, and management services on a business basis.
7. Choctaw Construction Enterprise - Authorized Purpose: To engage in the business of residential, commercial, and institutional construction as a general contractor or subcontractor on a contract basis, both on and off the Choctaw Indian Reservation

### 3. FIRST AMERICAN PRINTING AND DIRECT MAIL ENTERPRISE

#### Former Board

<u>Board Member</u>	<u>Term Expires</u>
Phillip Martin*	07/99
Rufus Tubby	07/99
Frank Steve	07/99
Donna Denson	07/97
William R. Bell	07/97

\*Chairman

\*\*Treasurer

#### New Board

<u>Board Member</u>	<u>Term Expires</u>
Phillip Martin*	N/A
Hayward Bell**	N/A
Rufus Tubby	07/99
William R. Bell	07/99
Donna Denson	07/97

### 4. CHOCTAW MANUFACTURING ENTERPRISE

#### Former Board

<u>Board Member</u>	<u>Term Expires</u>
Phillip Martin*	07/98
Austin Tubby	07/98
William Comby	07/96

\*Chairman

\*\*Treasurer

#### New Board

<u>Board Member</u>	<u>Term Expires</u>
Phillip Martin*	N/A
Hayward Bell**	N/A
Austin Tubby	07/98

### 5. CHOCTAW GOLF ENTERPRISE

#### Former Board

<u>Board Member</u>	<u>Term Expires</u>
Phillip Martin*	01/2000
John Farmer	01/2000
Roger Anderson	01/98

\*Chairman

\*\*Treasurer

#### New Board

<u>Board Member</u>	<u>Term Expires</u>
Phillip Martin*	N/A
Hayward Bell**	N/A
Roger Anderson	01/2000

## 6. CHOCTAW RESIDENTIAL CENTER ENTERPRISE

### Former Board

<u>Board Member</u>	<u>Term Expires</u>
Phillip Martin*+	N/A
William R. Bell+	N/A
Hayward Bell**+	N/A
Billy Chickaway+	10/97
Peggy Crawford	10/97
Jimmy Lee Shannon	10/97
Margaret Muse	10/99

### New Board

<u>Board Member</u>	<u>Term Expires</u>
Phillip Martin*	N/A
Hayward Bell**	N/A
William R. Bell	N/A
Billy Chickaway	N/A
Margaret Muse	10/99
Peggy Crawford	10/2001
Jimmy Lee Shannon	10/2001

\*Chairman

\*\*Treasurer

+Chief, Vice Chief, Secretary-Treasurer, and Chairman of the Health Committee of the Tribal Council are automatic members.

## 7. CHOCTAW CONSTRUCTION ENTERPRISE

### Former Board

<u>Board Member</u>	<u>Term Expires</u>
Phillip Martin*	07/97
William R. Bell	07/97
Frank Steve	07/97
Rufus Tubby	07/97
Thallis Lewis	07/99
Lola Parkerson	07/99
Melford Farve	07/99

### New Board

<u>Board Member</u>	<u>Term Expires</u>
Phillip Martin*	N/A
Hayward Bell**	N/A
Thallis Lewis	07/99
Lola Parkerson	07/99
Melford Farve	07/2001

\*Chairman

\*\*Treasurer

8. CHOCTAW SHOPPING CENTER ENTERPRISE

Former Board

New Board

<u>Board Member</u>	<u>Term Expires</u>	<u>Board Member</u>	<u>Term Expires</u>
Phillip Martin*	07/98	Phillip Martin*	N/A
John Farmer	07/98	Hayward Bell**	N/A
Frank Steve	07/2000	John Farmer	07/98
Donna Denson	07/2000	Frank Steve	07/2000
Austin Tubby	07/2000	Austin Tubby	07/2000

\*Chairman

\*\*Treasurer

C

1960



1960

1960

MISSISSIPPI BAND OF CHOCTAW INDIANS  
101 Industrial Park Road  
Choctaw, MS 39350

ORDINANCE NO. 63 B

AN ORDINANCE AMENDING THE CHARTER TO IKBI, INC. AS SET FORTH IN  
TRIBAL ORDINANCE 63 AND ORDINANCE 63-A

WHEREAS, the Tribal Council of the Mississippi Band of Choctaw Indians has the power, pursuant to Article VIII, Section 1(j) of its Revised Constitution and Bylaws, "to create, or to provide by ordinance for the creation of organizations, including public and private corporations, for any lawful purpose, which may be non-profit or profit making, and to regulate the activities of such organizations by ordinance"; and

WHEREAS, in the exercise of the aforementioned powers, the Tribal Council approved the adoption of Ordinance 63 on June 28th, 2004, which created IKBI, Inc. and approved the Amended Tribal Charter/Articles of Incorporation for IKBI, Inc. through adoption of Ordinance 63-A on October 12, 2004; and,

WHEREAS, the Tribal Charter/Articles of Incorporation of IKBI, Inc. states that "No amendments shall be effected to this Charter except those passed by Ordinance of the Tribal Council of the Mississippi Band of Choctaw Indians," and

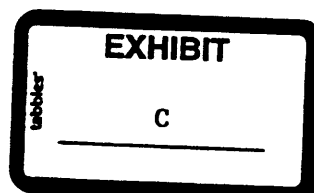
WHEREAS, the U.S. Small Business Administration requires all Indian tribes or tribal entities or enterprises applying for, or participating in, SBA's Sec. 8(a) disadvantaged contractor program or other SBA program that adopts the Sec. 8(a) standards at 13 C.F.R. §124.109 to include either a limited waiver of tribal sovereign immunity or a "sue and be sued clause" in its corporate charter to permit suits to be brought in courts of "competent jurisdiction" regarding matters relating to SBA programs; and,

WHEREAS, U.S. Small Business Administration has informed the corporation that the required express sovereign immunity waiver language is not adequately contained in the corporations' amended Articles of Incorporation, and

WHEREAS, the corporation has requested a change in its Articles of Incorporation to comply with the requirements of the U.S. Small Business Administration; and

WHEREAS, the recommended changes to the IKBI, Inc. Articles of Incorporation have been reviewed and approved by the Board of Directors of the Mississippi Band of Choctaw Indians d/b/a Choctaw Development Enterprise; now therefore be it

ENACTED, that the Tribal Council of the Mississippi Band of Choctaw Indians does hereby delete the following language included as section "J Sue and Be Sued Clause: Waiver of Sovereign Immunity" of the Articles of Incorporation:



Ordinance No. 63 B, Page 2  
November 15, 2004

"The firm may sue and be sued in courts of competent jurisdiction, including United States Federal courts, but the grant or exercise of such power to sue shall not be deemed a consent by the Mississippi Band of Choctaw Indians to levy of any judgment, lien, or attachment upon the property of the Mississippi Band of Choctaw Indians other than income or property specifically pledged or assigned."

and be it further

ENACTED, that the Tribal Council of the Mississippi Band of Choctaw Indians does hereby enact the following language as Section J of the Articles of Incorporation for IKBI, Inc.,

"IKBI, Inc. may sue and be sued in courts of competent jurisdiction, including United States Federal Courts, for all matters relating to SBA's programs including, but not limited to, 8(a) BD program participation, loans, and contract performance."

and be it further

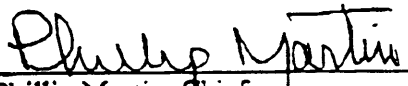
ENACTED, that this ordinance shall become effective from and after the date of its final approval by the Tribal Council.

#### CERTIFICATION

I, the undersigned, as Secretary-Treasurer of the Mississippi Band of Choctaw Indians, certify that the Tribal Council of said Band is composed of sixteen members, 13 of whom, constituting a quorum, were present at a Special Call Meeting thereof, duly called, noticed, convened and held this 15<sup>th</sup> day of November 2004; and that the foregoing Ordinance was duly enacted by a vote of 13 members in favor, 0 opposed and 0 abstaining.

Dated this 15<sup>th</sup> day of November 2004.

ATTEST:

  
Phillip Martin, Chief

  
Billy G. Chickaway, Secretary-Treasurer



MISSISSIPPI BAND OF CHOCTAW INDIANS  
TRIBAL CHARTER  
Articles of Incorporation

This charter is established pursuant to Article VIII, section 1(j), of its Revised Constitution and Bylaws (1975), which provides that the Tribal Council may "create, or to provide by ordinance for the creation of organizations, including public and private corporations, for any lawful purpose, which may be non-profit or profit-making, and to regulate the activities of such organizations by ordinance," and this charter shall become effective immediately upon issuance by the Choctaw Tribal Council.

I. Type of Corporation

      X       Profit                      Nonprofit

II. Name of Corporation

IKBI, INC.

III. FOR NONPROFITS ONLY: The period of duration is            years or            perpetual.

IV. FOR PROFITS ONLY: The Number (and Classes) if any of shares the corporation is authorized to issue is (are) as follows

Classes	# of shares	If more than one (1) class of shares is Authorized, the preferences, limitations, and relative rights of each class are as follows:
---------	-------------	---

<u>Common</u>	<u>1,000</u>	<u>Non transferable</u>
---------------	--------------	-------------------------

V. Name and Street Address of the Registered Agent and Registered Office is

Name Mississippi Band of Choctaw Indians Office of the Attorney General

Physical Address 354 Industrial Road

P. O. Box 6258

City, State, Zip Choctaw Mississippi 39350

VI The name and complete address of each incorporator are as follows:

Name Chief Phillip Martin

Street Post Office Box 6010

City, State, Zip Choctaw Mississippi 39350

Name Billy Chickaway, Secretary-Treasurer, MS Band of Choctaw Indians

Street Post Office Box 6010

City, State, Zip Choctaw Mississippi 39350

Name Josh Gamblin

Street 300 Choctaw Town Center, Suite 302

City, State, Zip Choctaw Mississippi 39350

VII. Other Provisions

A. Purpose

The purpose of the corporation shall be to compete for and perform construction contracts and any other lawful purpose consistent with this Charter.

B. Shareholder

Section 1. Shareholder. This corporation is wholly owned by Mississippi Band of Choctaw Indians d/b/a Choctaw Development Enterprise ("CDE"). The Mississippi Band of Choctaw Indians, a federally recognized Indian tribe, is sole shareholder. All Powers of the shareholders shall be exercised by the CDE Board of Directors.

Section 2. Annual Meeting. The annual meeting of the shareholder shall be held on a day as shall be fixed by the IKBI, Inc. Board of Directors, for the purpose of electing directors and for the transaction of such other business as may come before the meeting.

Section 3. Special Meetings. Special meetings of the shareholder may be called by the IKBI president or by the IKBI Board of Directors, and shall be called at the request of the shareholder.

Section 4. Notice of Meeting. Written notice stating the place, day and hour of the annual meeting and, in case of special meeting, the purpose or purposes for which the meeting is called shall be delivered not less than ten (10) nor more than sixty (60) days

before the date of the meeting, either personally or by mail, by or at the direction of the president or the Board of Directors calling the meeting, to the shareholder.

### C. Board of Directors

Section 1. Number, Tenure and Qualifications. The corporation shall be governed by three directors, as the shareholder shall elect, who shall be enrolled members of the Mississippi Band of Choctaw Indians. Each director shall hold office until the next annual meeting of shareholders and until such director's successor shall have been elected and qualified. No member of the Tribal Council of the Mississippi Band of Choctaw Indians shall be permitted to serve on the Board of Directors.

Section 2. Regular Meetings. The annual meeting of the Board of Directors shall be held on a day as shall be fixed by the Board of Directors.

Section 3. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the president or one (1) director. The person authorized to call special meetings of the Board of Directors may fix any place as the place for holding any special meeting of the Board of Directors. Any special meeting of the Board of Directors may be combined with any annual or special meeting of the shareholder.

Section 4. Notice. Notice of any special meeting shall be given at least two (2) days previously thereto by written notice delivered personally or mailed to each director at such director's business address, or by telegram. If mailed, such notice shall be deemed to be delivered the earlier of five (5) days after deposit in the United States mail, postage prepaid, to such director's business address, or when received. If notice is given by telegram, such notice shall be deemed to be delivered when received. Any director may waive notice of any meeting which waiver may be signed before, during or after the meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director at the beginning of the meeting (or promptly upon such director's arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need to be specified in the notice of waiver of notice of such meeting.

Any regular or special meeting of the Board of Directors may be conducted through the use of any means of communications by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 5. Quorum. A majority of the Board of Directors shall constitute a quorum.

Section 6. Powers of the Board of Directors. The Board of Directors shall have the authority to manage the business and affairs of the corporation and to promulgate bylaws in accordance with this charter. The Board of Directors shall not have the authority to

the Board of Directors of the corporation, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

#### E. Indemnity

The corporation shall, as an addition to and not in substitution for any liability insurance that the Board of Directors may elect to maintain in effect, indemnify any past, present or future member of the Board of Directors or officers of the corporation for actual personal expenses, liability or damages resulting from any claim, lawsuit, or action brought against any such individuals for alleged negligent conduct in performing the duties of his or her office or board position for the corporation; provided, however, that this indemnity shall be available only to the extent that corporate funds are available and to the extent that insurance proceeds do not adequately indemnify and make whole such indemnified persons and provide further that no such person shall be indemnified against any liability determined by any court to have arisen out of his or her bad faith or willful misconduct for personal gain.

#### F. Contracts

The Board of Directors may authorize any officer or officers, agent, or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or may be limited to specific instances. The Board of Directors shall not have any authority to waive the sovereign immunity of the Mississippi Band of Choctaw Indians.

#### G. Dividends

The Board of Directors may, from time to time, declare and the corporation may pay dividends to the shareholder on its outstanding shares in the manner and upon the terms and conditions provided its bylaws.

#### H. Financial Records and Audit

The Board of Directors of the enterprise shall maintain accurate and complete records of the financial affairs of the Corporation, shall cause an annual audit of the Corporation's financial affairs to be conducted by a certified public accountant in accordance with generally accepted accounting principles, consistently applied, shall furnish annual budget results, an annual balance sheet, income statement, and complete report of the financial affairs of the corporation to the shareholder within five months of the close of the corporation fiscal year. The annual Audit shall be provided to the Chief and the Chief shall provide to the Tribal Council within five months of the close of the enterprise fiscal year.

#### I. Fiduciary Duty

All directors, officers and shareholders shall discharge their duties to the corporation in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner he or she reasonably believes to be in the best interests of the corporation.

J. Sue and Be Sued Clause: Waiver of Sovereign Immunity

IKBI, Inc. may sue and be sued in courts of competent jurisdiction, including United States Federal Courts, for all matters relating to SBA's programs including, but not limited to, 8(a) BD program participation, loans, and contract performance.

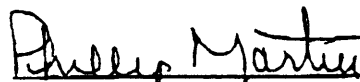
K. Annual Report

The Board of Directors shall cause an annual report of the corporation to be filed with the Secretary/Treasurer of the Mississippi Band of Choctaw Indians within sixty (60) days of each anniversary of the issuance of this charter. Such annual report shall set forth:

- (1) The name of the corporation and the jurisdiction under whose law it is incorporated;
- (2) The address of its registered office and the name of its registered agent at that office;
- (3) The address of its principal office;
- (4) The names and business addresses of its directors and principal officers;
- (5) A brief description of the nature of business;
- (6) The total number of authorized shares, itemized by class and series, if any, within each class; and
- (7) The total number of issued and outstanding shares, itemized by class and series, if any, within each class.

This Tribal Charter shall continue until revoked by Ordinance of the Tribal Council of the Mississippi Band of Choctaw Indians. No amendments shall be effected to this Charter except those passed by Ordinance of the Tribal Council of the Mississippi Band of Choctaw Indians.

Issued per Ordinance 63 of Mississippi Band of Choctaw Indians Tribal Council on June 28, 2004, and amended by Ordinance 63A on October 12, 2004 and by Ordinance 63B on November 15, 2004.

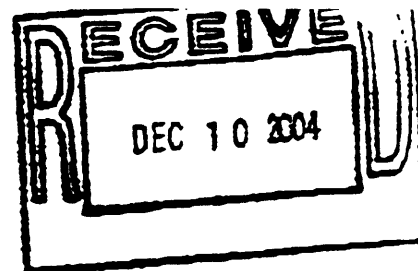
  
Chief Phillip Martin

  
Billy G. Chickaway, Secretary-Treasurer

**D**



U.S. Small Business Administration  
Washington, D.C. 20416



VIA FAX 601/656-1675

Josh Gamblin, Manager  
IKBI, Inc.  
300 Choctaw Town Center  
Choctaw, Mississippi 39350

DEC 6 2004

Dear Mr. Gamblin:

Congratulations! Your firm has been certified as a Participant in the U.S. Small Business Administration's (SBA) 8(a) BD program. Your nine (9) year program term begins on the date of this letter.

Additionally, your firm has been certified as a Small Disadvantaged Business (SDB) in the Federal Government's SDB program. Your term of participation in the SDB program is concurrent with your 8(a) BD certification.

During participation in the 8(a) program, you will receive business development assistance from an assigned Business Opportunity Specialist in the Mississippi District Office located at 210 East Capital Street, Suite 900, Jackson, Mississippi, 39201. The phone number is 601/965-4378. The District office will also be able to provide you with information on the SDB program and its benefits.

Your firm will become eligible to receive 8(a) contracts after you submit a business plan using SBA Form 1010C and receive SBA's approval of the plan. We are sending a copy of this certification letter to the SBA Mississippi District Office. That office will send you the business plan form.

SBA requires that the President or Chief Executive Officer sign a Participation Agreement to show that he or she understands the conditions of 8(a) program participation. Please read the Agreement carefully, sign and date one copy and return it to the SBA Mississippi District Office at the address shown in the third paragraph above. The second copy is for you.

Even though your firm's approved North American Industry Classification System (NAICS) Code is 236220, your firm may be awarded contracts under other NAICS Codes, as long as the firm is qualified to perform. In this regard, please note that contracts awarded under 8(a) BD program authority generally result from the self-marketing efforts of the 8(a) firm. While your firm's acceptance into the 8(a) BD program is not a guarantee of contract support, SBA will make every effort to provide you with assistance in your marketing efforts.

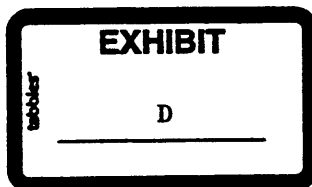
If you have not already done so, we strongly suggest that you acquire access to e-mail to enhance your communication abilities with public and private sector buyers. Also, you should consider setting up a merchant account with a credit card company which will give you the ability to accept credit card orders for your goods and services from over 1,000 Federal buying offices. Finally, please contact your local SBA District Office to update your enrollment in PRO-Net, an SBA online procurement listing of small businesses utilized by public and private sector buyers.

We welcome you as an 8(a) program participant and look forward to working with you.

Sincerely,

Al Stubblefield  
Acting Associate Administrator  
Office of Business Development

Enclosures



E



# **IKBI, Incorporated Board of Directors Meeting**

Excerpt of Minutes of December 23, 2004

The Regular meeting of the IKBI, Incorporated Board of Directors was held on Thursday, December 23, 2004, beginning at 11:00 AM in the Board Room located at the IKBI, Incorporated offices. This is an excerpt of said meeting.

## **Roll Call**

Charlie W. Benn, Chairman  
Jason Grisham, Secretary/Treasurer  
Loriann Ahshapanek, Board Member

Three members were present at roll call, constituting a quorum.

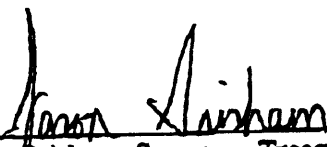
## **New Insurance Plan**

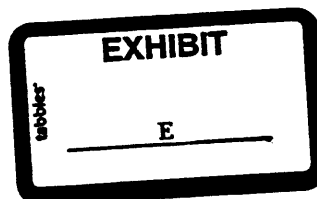
The Chairman, Mr. Benn, read aloud the next order of business on the meeting agenda, "A motion to award the IKBI insurance package to the lowest and most valuable bidder." He next made a motion to adopt, which was seconded by board member Ahshapanek. Chairman Benn called for questions or comments. He then requested that Mr. Gamblin explain the reasoning behind the proposed change.

Mr. Gamblin stated that this issue was necessary for two reasons, the first being that the in order to maintain IKBI's separateness from the tribe it was important not to partake in the tribal insurance plan, even as a separate company paying separate premiums. Secondly Mr. Gamblin explained that he had received a better price quote from Blue Cross/Blue Shield of Mississippi, a savings of almost \$2,600 a year.

Discussion then ranged about the benefits of entering into insurance pools and the pros and cons. Mr. Gamblin then stated that through their membership in the Associated Builders and Contractors they would be eligible to enter that organizations health care plan but it was not available at the current time. Mr. Benn then cited that this would be the less unpredictable in concern to rates because of the number of participants in insurance pools of this kind. Mr. Benn then stated IKBI should look into this situation when it became available.

Following this, Chairman Benn called for a roll call vote on the motion, and the vote was unanimous. The motion to award the IKBI, Incorporated insurance package to the lowest and most valuable bidder was duly enacted by a vote of three (3) members in favor and zero (0) opposed.

  
\_\_\_\_\_  
Jason Grisham, Secretary-Treasurer



F



## Agreement of Indemnity

THIS AGREEMENT of Indemnity, made and entered into this \_\_\_\_\_ day of November, 2004 by IKBI, Inc., 300 Choctaw Town Center, Suite 302, Choctaw, MS 39350 (hereinafter called the Contractor) and The Mississippi Band of Choctaw Indians, d/b/a Choctaw Development Enterprise, 201 James Billie Road, Choctaw, MS 39350 (hereinafter called the Indemnitors, if any) and ZURICH AMERICAN INSURANCE COMPANY and its Subsidiaries and Affiliates including, but not limited to FIDELITY AND DEPOSIT COMPANY OF MARYLAND, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY, its successors and assigns (hereinafter called Surety).

### WITNESSETH:

WHEREAS, the Contractor, in the performance of contracts and the fulfillment of obligations generally, whether in its own name solely or as co-adventurer with others, may desire or be required to give or procure certain surety bonds, undertakings or instruments of guarantee, and to renew, or continue or substitute from time to time the same or new bonds, undertakings or instruments of guarantee with the same or different penalties, and/or conditions, any one or more of which are hereinafter called Bonds; or the Contractor or Indemnitors may request the Surety to refrain from cancelling said Bonds; and

WHEREAS, at the request of the Contractor and the Indemnitors and upon the express understanding that this Agreement of Indemnity be given, the Surety has executed or procured to be executed, and may from time to time hereafter execute or procure to be executed, said Bonds on behalf of the Contractor, and

WHEREAS, the Indemnitors have a substantial, material and beneficial interest in the obtaining of the Bonds or in the Surety's refraining from cancelling said Bonds.

Now, THEREFORE, in consideration of the premises the Contractor and Indemnitors for themselves, their heirs, executors, administrators successors and assigns, jointly and severally, hereby covenant and agree with the Surety, as follows:

### PREMIUMS

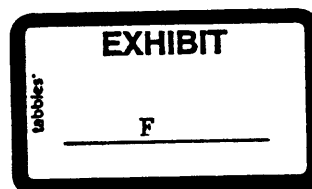
FIRST: The Contractor and Indemnitors will pay to the Surety in such manner as may be agreed upon all premiums and charges of the Surety for the Bonds in accordance with its rate filings, its manual of rates, or as otherwise agreed upon, until the Contractor or Indemnitors shall serve evidence satisfactory to the Surety of its discharge or release from the Bonds and all liability by reason thereof.

### INDEMNITY

SECOND: The Contractor and Indemnitors shall exonerate, indemnify, and keep indemnified the Surety from and against any and all liability for losses and/or expenses of whatsoever kind or nature (including, but not limited to, interests, court costs and counsel fees) and from and against any and all such losses and/or expenses which the Surety may sustain and incur: (1) By reason of having executed or procured the execution of the Bonds, (2) By reason of the failure of the Contractor or Indemnitors to perform or comply with the covenants and conditions of this Agreement or (3) In enforcing any of the covenants and conditions of this Agreement. Payment by reason of the aforesaid causes shall be made to the Surety by the Contractor and Indemnitors as soon as liability exists or is asserted against the Surety, whether or not the Surety shall have made any payment therefor. Such payment shall be equal to the amount of the reserve set by the Surety. In the event of any payment by the Surety the Contractor and Indemnitors further agree that in any accounting between the Surety and Contractor, or between the Surety and the Indemnitors, or either or both of them, the Surety shall be entitled to charge for any and all disbursements made by it in good faith in and about the matters herein contemplated by this Agreement under the belief that it is or was liable for the sums and amounts so disbursed, or that it was necessary or expedient to make such disbursements, whether or not such liability, necessity or expediency existed; and that the vouchers or other evidence of any such payments made by the Surety shall be *prima facie* evidence of the fact and amount of the liability to the Surety.

### ASSIGNMENT

THIRD: The Contractor, the Indemnitors hereby consenting, will assign, transfer and set over, and does hereby assign, transfer and set over to the Surety, as collateral, to secure the obligations in any and all of the paragraphs of this Agreement and any other indebtedness and liabilities of the Contractor to the Surety, whether heretofore or hereafter, incurred, the assignment in the case of each contract to become effective as of the date of the bond covering such contract, but only in the event of (1) any abandonment, forfeiture or breach of any contracts referred to in the Bonds or of any breach of any said Bonds; or (2) of any breach of the provisions of any of the paragraphs of this Agreement; or (3) of a default in discharging such other indebtedness or liabilities when due; or (4) of any assignment by the Contractor for the benefit of creditors, or of the appointment, or of any application for the



appointment, of a receiver or trustee for the Contractor whether insolvent or not, or (c) the Contractor of the use of any of the machinery, equipment, plant, tools or material referred to in section (b) of this paragraph; or (b) of the Contractor's dying, absconding, disappearing, incompetency, being convicted of a felony, or imprisoned if the Contractor be an individual: (a) All the rights of the Contractor in, and growing in any manner out of, all contracts referred to in the Bonds, or in, or growing in any manner out of the Bonds; (b) All the rights, title and interest of the Contractor in and to all machinery, equipment, plants, tools, drawings, plans, designs, architectural works, documents, specifications, models and materials which are now, or may hereafter be, about or upon the site or sites of any and all of the contractual work referred to in the Bonds or elsewhere, including materials purchased for, held, intended for or chargeable to any and all contracts referred to in the Bonds, and in and in process of construction, in storage elsewhere, or in transportation to any and all of said sites; (c) All the rights, title and interest of the Contractor in and to all subcontracts let or to be let in connection with any and all contracts referred to in the Bonds, and in and to all surety bonds supporting such subcontracts; (d) All actions, causes of actions, claims and demands whatsoever which the Contractor may have or acquire against any subcontractor, laborer or materialman, or any person furnishing or agreeing to furnish or supply labor, material, supplies, machinery, tools or other equipment in connection with or on account of any and all contracts referred to in the Bonds; and against any surety or sureties of any subcontractor, laborer, or materialman; (e) Any and all percentages retained and any and all sums that may be due or hereafter become due on account of any and all contracts referred to in the Bonds, and all other contracts whether bonded or not in which the Contractor has an interest; (f) A license to use, without cost to the Surety, any interest the Contractor may have in and to all copyrights, inventions, applications, patents, or any other form of intellectual property, and any improvements thereon, which now, or may hereafter, relate to any and all of the contracts referred to in the Bonds or elsewhere, or which are now, or may hereafter be, embodied in any drawings, plans, designs, architectural works, documents, specifications, models, machinery, equipment, plants, processes or other materials referred to in section (b) of this paragraph.

#### TRUST FUND

FOURTH: If any of the Bonds are executed in connection with a contract which by its terms or by law prohibits the assignment of the contract price, or any part thereof, the Contractor and Indemnitors covenant and agree that all payments received for or on account of said contract shall be held as a trust fund in which the Surety has an interest, for the payment of obligations incurred in the performance of the contract and for labor, materials, and services furnished in the prosecution of the work provided in said contract or any authorized extension or modification thereof, and, further, it is expressly understood and declared that all monies due and to become due under any contract or contracts covered by the Bonds are trust funds, whether in the possession of the Contractor or Indemnitors or otherwise, for the benefit of and for payment of all such obligations in connection with any such contract or contracts for which the Surety would be liable under any of said Bonds, which said trust also inures to the benefit of the Surety for any liability or loss it may have or sustain under any said Bonds, and this Agreement and declaration shall also constitute notice of such trust.

#### UNIFORM COMMERCIAL CODE

FIFTH: That this Agreement shall constitute a Security Agreement to the Surety and also a Financing Statement, both in accordance with the provisions of the Uniform Commercial Code of every jurisdiction wherein such Code is in effect and may be so used by the Surety without in any way abrogating, restricting or limiting the rights of the Surety under this Agreement or under law, or in equity.

#### TAKEOVER

SIXTH: In the event of any breach or default asserted by the obligee in any said Bonds, or the Contractor has abandoned the work on or forfeited any contract or contracts covered by any said Bonds, or has failed to pay obligations incurred in connection therewith, or in the event of the death, disappearance, Contractor's conviction for a felony, imprisonment, incompetency, insolvency, or bankruptcy of the Contractor, or the appointment of a receiver or trustee for the Contractor, or the property of the Contractor, or in the event of an assignment for the benefit of creditors of the Contractor, or if any action is taken by or against the Contractor under or by virtue of the National Bankruptcy Act, or should reorganization or arrangement proceedings be filed by or against the Contractor under said Act, or if any action is taken by or against the Contractor under the insolvency laws of any state, possession, or territory of the United States the Surety shall have the right, at its option and in its sole discretion and is hereby authorized, with or without exercising any other right or option conferred upon it by law or in the terms of this Agreement, to take possession of any part or all of the work under any contract or contracts covered by any said Bonds, and at the expense of the Contractor and Indemnitors to complete or arrange for the completion of the same, and the Contractor and Indemnitors shall promptly upon demand pay to the Surety all losses, and expenses so incurred.

#### CHANGES

SEVENTH: The Surety is authorized and empowered, without notice to or knowledge of the Indemnitors to assent to any change whatsoever in the Bonds, and/or any contracts referred to in the Bonds, and/or in the general conditions, plans and/or specifications accompanying said contracts, including, but not limited to, any change in the time for the completion of said contracts and to payments or advances thereunder before the same may be due, and to assent to or take any assignment or assignments, to execute or consent to the execution of any continuations, extensions or renewals of the Bonds and to execute any substitute or substitutes therefor, with the same or different conditions, provisions and obligees and with the same or larger or smaller penalties, it being expressly understood and agreed that the Indemnitors shall remain bound under the terms of this Agreement even though any

such assent by the Surety does or might substantially increase the liability of said Indemnitors.

#### ADVANCES

EIGHTH: The Surety is authorized and empowered to guarantee loans, to advance or lend to the Contractor any money, which the Surety may see fit, for the purpose of any contracts referred to in, or guaranteed by the Bonds; and all money expended in the completion of any such contracts by the Surety, or lent or advanced from time to time to the Contractor, or guaranteed by the Surety for the purposes of any such contracts, and all costs, and expenses incurred by the Surety in relation thereto, unless repaid with legal interest by the Contractor to the Surety when due, shall be presumed to be a loss by the Surety for which the Contractor and the Indemnitors shall be responsible, notwithstanding that said money or any part thereof should not be so used by the Contractor.

#### BOOKS AND RECORDS

NINTH: At any time, and until such time as the liability of the Surety under any and all said Bonds is terminated, the Surety shall have the right to reasonable access to the books, records, and accounts of the Contractor, and Indemnitors; and any bank depository, materialman, supply house, or other person, firm, or corporation when requested by the Surety is hereby authorized to furnish the Surety any information requested including, but not limited to, the status of the work under contracts being performed by the Contractor, the condition of the performance of such contracts and payments of accounts.

#### DECLINE EXECUTION

TENTH: Unless otherwise specifically agreed in writing, the Surety may decline to execute any Bond and the Contractor and Indemnitors agree to make no claim to the contrary in consideration of the Surety's receiving this Agreement; and if the Surety shall execute a Bid or Proposal Bond, it shall have the right to decline to execute any and all of the bonds that may be required in connection with any award that may be made under the proposal for which the Bid or Proposal Bond is given and such declination shall not diminish or alter the liability that may arise by reason of having executed the Bid or Proposal Bond.

#### NOTICE OF EXECUTION

ELEVENTH: The Indemnitors hereby waive notice of the execution of said Bonds and of the acceptance of this Agreement, and the Contractor and the Indemnitors hereby waive all notice of any default, or any other act or acts giving rise to any claim under said Bonds, as well as notice of any and all liability of the Surety under said Bonds, and any and all liability on their part hereunder, to the end and effect that, the Contractor and the Indemnitors shall be and continue liable hereunder, notwithstanding any notice of any kind to which they might have been or be entitled, and notwithstanding any defenses they might have been entitled to make.

#### HOMESTEAD

TWELFTH: The Contractor and the Indemnitors hereby waive, so far as their respective obligations under this Agreement are concerned, all rights to claim any of their property, including their respective homesteads, as exempt from levy, execution, sale or other legal process under the laws of any State, Territory, or Possession.

#### SETTLEMENTS

THIRTEENTH: The Surety shall have the right to adjust, settle or compromise any claim, demand, suit or judgment upon the Bonds, unless the Contractor and the Indemnitors shall request the Surety to litigate such claim or demand, or to defend such suit, or to appeal from such judgment, and shall deposit with the Surety, at the time of such request, cash or collateral satisfactory to the Surety in kind and amount, to be used in paying any judgment or judgments rendered or that may be rendered, with interest, costs, expenses and attorneys' fees, including those of the Surety.

#### SURETIES

FOURTEENTH: In the event the Surety procures the execution of the Bonds by other sureties, or executes the Bonds with co-sureties, or reinsures any portion of said Bonds with reinsuring sureties, then all the terms and conditions of this Agreement shall inure to the benefit of such other sureties, co-sureties and reinsuring sureties, as their interests may appear.

#### SUITS

FIFTEENTH: Separate suits may be brought hereunder as causes of action accrue, and the bringing of suit or the recovery of judgment upon any cause of action shall not prejudice or bar the bringing of other suits, upon other causes of action, whether theretofore or thereafter arising.

#### OTHER INDEMNITY

SIXTEENTH: That the Contractor and the Indemnitors shall continue to remain bound under the terms of this Agreement even though the Surety may have from time to time heretofore or hereafter, with or without notice to or knowledge of the Contractor and the Indemnitors, accepted or released other agreements of indemnity or collateral in connection with the execution or procurement of said Bonds, from the Contractor or Indemnitors or others, it being expressly understood and agreed by the Contractor and the Indemnitors that any and all other rights which the Surety may have or acquire against the Contractor and the Indemnitors and/or others under any such other or additional agreements of indemnity or collateral shall be in addition to, and not in lieu of, the rights afforded the Surety under this Agreement.

SEVENTEENTH: In case any of the parties mentioned in this Agreement fail to execute the same, or in case the execution hereof by any of the parties be defective or invalid for any reason, such failure, defect or invalidity shall not in any manner affect the validity of this Agreement or the liability hereunder of any of the parties executing the same, but each and every party so executing shall be and remain fully bound and liable hereunder to the same extent as if such failure, defect or invalidity had not existed. It is understood and agreed by the Contractor and Indemnitors that the rights, powers, and remedies given the Surety under this Agreement shall be and are in addition to, and not in lieu of, any and all other rights, powers, and remedies which the Surety may have or acquire against the Contractor and Indemnitors or others whether by the terms of any other agreement or by operation of law or otherwise.

#### ATTORNEY IN FACT

EIGHTEENTH: The Contractor and Indemnitors hereby irrevocably nominate, constitute, appoint and designate the Surety as their attorney-in-fact with the right, but not the obligation, to exercise all of the rights of the Contractor and Indemnitors assigned, transferred and set over to the Surety in this Agreement, and in the name of the Contractor and Indemnitors to make, execute, and deliver any and all additional or other assignments, documents or papers deemed necessary and proper by the Surety in order to give full effect not only to the intent and meaning of the within assignments, but also to the full protection intended to be herein given to the Surety under all other provisions of this Agreement. The Contractor and Indemnitors, hereby ratify and confirm all acts and actions taken and done by the Surety as such attorney-in-fact.

#### TERMINATION

NINETEENTH: This Agreement may be terminated by the Contractor or Indemnitors upon twenty days' written notice sent by registered mail to the Surety at its home office at 3910 Kaswick Road, P.O. Box 1227, Baltimore, Maryland 21203, Attention: Vice President, Surety Department, but any such notice of termination shall not operate to modify, bar, or discharge the Contractor or the Indemnitors, as to the Bonds that may have been theretofore executed.

#### BONDS FOR RELATED ENTITIES

TWENTIETH: The Contractor and Indemnitors hereby agree that their obligation under this Agreement shall apply to any Bonds the Surety executes on behalf of any present or future, directly or indirectly owned subsidiaries or affiliates, and any other legal entities in which the Contractor has an ownership interest including, but not limited to, any corporations, partnerships, limited liability companies (LLC) and joint ventures, whether acting alone or in joint venture with others not named herein. In addition, the Contractor and Indemnitors agree that their obligations under this Agreement shall apply to any Bonds the Surety issues on behalf of any entity upon the written request of IKBI, Inc.

TWENTY-FIRST: This Agreement may not be changed or modified orally. No change or modification shall be effective unless made by written endorsement executed to form a part hereof.

IN WITNESS WHEREOF, we have signed, and sealed the day and year first above written.

ATTEST OR WITNESS:

CONTRACTOR:

IKBI, Inc.  
300 Choctaw Town Center, Suite 302, Choctaw, MS 39350

SEAL

Josh W. Gamblin - President

Charlie W. Benn - Chairman of the Board  
FEIN: 20-1304785

INDEMNITORS:

The Mississippi Band of Choctaw Indians, d/b/a, Choctaw Development  
Enterprise  
201 James Billie Road, Choctaw, MS 39350

SEAL

Billy Chickaway - Secretary/Treasurer

Tribal Chief Phillip Martin - Chairman of the Board  
FEIN: 64-0345731

By \_\_\_\_\_

(SEAL)

Assistant Secretary

Vice-President

For Acknowledgment of Contractor's Signature  
CORPORATE ACKNOWLEDGMENT

STATE OF Mississippi } SS:  
COUNTY OF Neshoba }

On this \_\_\_\_\_ day of \_\_\_\_\_ November \_\_\_\_\_, 2004, before me, the subscriber, personally appeared Charlie W. Benn to me personally known, who, being duly sworn, did depose and say that he

(insert here name of officer who signs for the corporation)  
resides in the city of Choctaw, MS, that he is the \_\_\_\_\_ Chairman of IKBL Inc. the corporation described in, and which executed, the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order; and the deponent further said that he is acquainted with Josh W. Gamblin

(insert here name of officer who attests for the corporation)

and knows that he is the President of said corporation and that he subscribed his name to the within instrument by a like order of the said Board of Directors.

My Commission Expires \_\_\_\_\_

(Notary Public)

For Acknowledgment of Indemnitor's Signatures  
ENTERPRISE ACKNOWLEDGMENT

STATE OF Mississippi } SS:  
COUNTY OF Neshoba }

On this \_\_\_\_\_ day of \_\_\_\_\_ November \_\_\_\_\_, 2004, before me, the subscriber, personally appeared Tribal Chief Phillip Martin to me personally known,

(insert here name of officer who signs for the corporation)

who, being duly sworn, did depose and say that he resides in the city of Choctaw, MS, that he is the Chairman of The Mississippi Band of Choctaw Indians, d/b/a Choctaw Development Enterprise the enterprise described in, and which executed, the within instrument; that he knows the seal of said enterprise; that the seal affixed to said instrument is such enterprise seal; that it was so affixed by order of the Board of Directors of said enterprise, and that he signed his name thereto by like order; and the deponent further said that he is acquainted with Billy Chickaway

(insert here name of officer who attests for the corporation)

and knows that he is the Secretary of said enterprise and that he subscribed his name to the within instrument by a like order of the said Board of Directors.

My Commission Expires \_\_\_\_\_

(Notary Public)

## RESOLUTION

BE IT RESOLVED, That Chief Phillip Martin, Chairman of the Board, and Billy Chickarway, Secretary of this enterprise (hereinafter Enterprise) be and they are hereby authorized, empowered and directed to execute, seal and deliver on behalf of this enterprise a general agreement of indemnity in favor of ZURICH AMERICAN INSURANCE COMPANY and its Subsidiaries and Affiliates including, but not limited to FIDELITY AND DEPOSIT COMPANY OF MARYLAND, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY and AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY ("hereinafter Subsidiaries and Affiliates") on a form submitted by it to protect the said ZURICH AMERICAN INSURANCE COMPANY and its Subsidiaries and Affiliates from and against any and all loss, costs, damages, attorneys' fees and expenses which it may sustain or incur by reason of executing or having executed or by reason of procuring or having procured the execution of any bonds, undertakings and obligations of suretyship or guarantee on behalf of IKBI, Inc. or any of Enterprise's present or future, directly or indirectly owned subsidiaries or affiliates, or on behalf of any other legal entity in which the Enterprise has an ownership interest including, but not limited to, corporations, partnerships, limited liability companies and joint ventures, whether alone or in joint venture with others whether or not named herein, and any corporation, partnership or person upon the written request of the Enterprise.

STATE OF Mississippi }  
COUNTY OF Neshoba } SS:

THIS IS TO CERTIFY, That the foregoing is a true and correct copy of a resolution passed by the Board of Directors of Choctaw Development Enterprise (A Component Unit of the Mississippi Band of Choctaw Indians) at a meeting held in the City of Choctaw, MS, State of Mississippi, on the \_\_\_\_\_ day of November, 2004, at which a quorum was present and voting and that the same was spread upon the minutes of said meeting.

\_\_\_\_\_  
Billy Chickarway - Secretary

Subscribed and sworn to before me this \_\_\_\_\_ day of November, 2004.

\_\_\_\_\_  
Notary Public



G

**MISSISSIPPI BAND OF CHOCTAW INDIANS**

**RESOLUTION CHO 05-013**

**A RESOLUTION TO APPROVE AN AGREEMENT OF INDEMNITY BETWEEN THE MISSISSIPPI BAND OF CHOCTAW INDIANS D/B/A CHOCTAW DEVELOPMENT ENTERPRISE AND THE ZURICH AMERICAN INSURANCE COMPANY AND TO APPROVE A LIMITED WAIVER OF SOVEREIGN IMMUNITY CONTINGENT ON A FAVORABLE RULING FROM THE FEDERAL ELECTION COMMISSION**

WHEREAS, the tribal Council of the Mississippi Band of Choctaw Indians (the "Tribe") is empowered to address the regulation and establishment of tribal business enterprises under Article VIII, Section 1(h), (j) and (o) of the Revised Constitution and Bylaws of the Mississippi Band of Choctaw Indians, and

WHEREAS, the Choctaw Development Enterprise is an unincorporated division of the Mississippi Band of Choctaw Indians operated in accordance with Tribal Ordinance 56, "An Ordinance Providing for Classification, Regulation and Creation of Tribal Business Enterprises;" and

WHEREAS, IKBI, Inc. is a tribally chartered corporation wholly owned by Choctaw Development Enterprise established by Tribal Ordinance 63, and

WHEREAS, IKBI, Inc. is seeking off-reservation construction contracts that require the purchase of surety bonds, and

WHEREAS, IKBI, Inc., being a start-up company, is currently unable to obtain such surety bonds without indemnification from a third party, and

WHEREAS, the Choctaw Development Board of Directors recommends to the Tribal Council the approval of the attached Indemnity Agreement, and

WHEREAS, there currently is uncertainty regarding whether to not the execution of said Indemnity Agreement would jeopardize the Tribe's right to make federal political contributions, and the Tribe is therefore seeking a ruling from the Federal Election Commission to resolve the uncertainty, now therefore be it

RESOLVED, that contingent on a favorable ruling from the Federal Election Commission, the Insurance and Indemnity Agreement with Zurich American Insurance Company and its subsidiaries, in substantially the form attached hereto as Exhibit "A" is hereby approved, and the Chief and Secretary-Treasurer are authorized to execute such document, with any changes as may be approved by the Chief; and be it further

RESOLVED, that contingent on a favorable ruling from the Federal Election Commission, the Tribal Council of the Mississippi Band of Choctaw Indians hereby



waives sovereign immunity from suit or other actions in the Tribal Court of the Mississippi Band of Choctaw Indians and consents to personal jurisdiction in such Tribal Court (a) up to \$5 Million dollars with respect to claims by Zurich American Insurance Company or its successors regarding amounts owed by the Choctaw Development Enterprise to the extent of receipt of insurance proceeds required to be carried pursuant to the Insurance and Indemnity Agreement attached here as Exhibit "A" with respect to claims by Zurich American Insurance Company and its subsidiaries to enforce such Insurance and Indemnity Agreement, and be it further

RESOLVED, that except to the extent expressly waived herein the Mississippi Band of Choctaw Indians d/b/a Choctaw Development Enterprise, retains immunities, and the foregoing waiver shall be so strictly construed, and be it further

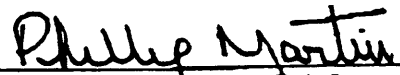
RESOLVED that a copy of the Federal Election Commission ruling be provided to the members of the Tribal Council.

#### CERTIFICATION

I, the undersigned, as Secretary-Treasurer of the Mississippi Band of Choctaw Indians, certify that the Tribal Council of said Band is composed of 16 members, 12 of whom, constituting a quorum, were present at a Special Called meeting thereof, duly called, noticed, convened, and held this 28th day of December 2004; and that the foregoing Resolution was duly adopted by a vote of 12 members in favor, 0 opposed, and 0 abstaining.

Dated this 28th day of December 2004.

ATTEST:

  
Phillip Martin, Tribal Chief

, Acting  
Billy G. Chickaway, Secretary-Treasurer



## Agreement of Indemnity

THIS AGREEMENT of Indemnity, made and entered into this \_\_\_\_\_ day of November, 2004 by IKBI, Inc., 300 Choctaw Town Center, Suite 302, Choctaw, MS 39350 (hereinafter called the Contractor) and The Mississippi Band of Choctaw Indians, d/b/a Choctaw Development Enterprise, 201 James Billie Road, Choctaw, MS 39350 (hereinafter called the Indemnitors, if any) and ZURICH AMERICAN INSURANCE COMPANY and its Subsidiaries and Affiliates including, but not limited to FIDELITY AND DEPOSIT COMPANY OF MARYLAND, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY, its successors and assigns (hereinafter called Surety).

### WITNESSETH:

WHEREAS, the Contractor, in the performance of contracts and the fulfillment of obligations generally, whether in its own name solely or as co-adventurer with others, may desire or be required to give or procure certain surety bonds, undertakings or instruments of guarantee, and to renew, or continue or substitute from time to time the same or new bonds, undertakings or instruments of guarantee with the same or different penalties, and/or conditions, any one or more of which are hereinafter called Bonds; or the Contractor or Indemnitors may request the Surety to refrain from cancelling said Bonds; and

WHEREAS, at the request of the Contractor and the Indemnitors and upon the express understanding that this Agreement of Indemnity be given, the Surety has executed or procured to be executed, and may from time to time hereafter execute or procure to be executed, said Bonds on behalf of the Contractor; and

WHEREAS, the Indemnitors have a substantial, material and beneficial interest in the obtaining of the Bonds or in the Surety's refraining from cancelling said Bonds.

Now, THEREFORE, in consideration of the premises the Contractor and Indemnitors for themselves, their heirs, executors, administrators successors and assigns, jointly and severally, hereby covenant and agree with the Surety, as follows:

### PREMIUMS

FIRST: The Contractor and Indemnitors will pay to the Surety in such manner as may be agreed upon all premiums and charges of the Surety for the Bonds in accordance with its rate filings, its manual of rates, or as otherwise agreed upon, until the Contractor or Indemnitors shall serve evidence satisfactory to the Surety of its discharge or release from the Bonds and all liability by reason thereof.

### INDEMNITY

SECOND: The Contractor and Indemnitors shall exonerate, indemnify, and keep indemnified the Surety from and against any and all liability for losses and/or expenses of whatsoever kind or nature (including, but not limited to, interests, court costs and counsel fees) and from and against any and all such losses and/or expenses which the Surety may sustain and incur: (1) By reason of having executed or procured the execution of the Bonds, (2) By reason of the failure of the Contractor or Indemnitors to perform or comply with the covenants and conditions of this Agreement or (3) In enforcing any of the covenants and conditions of this Agreement. Payment by reason of the aforesaid causes shall be made to the Surety by the Contractor and Indemnitors as soon as liability exists or is asserted against the Surety, whether or not the Surety shall have made any payment therefor. Such payment shall be equal to the amount of the reserve set by the Surety. In the event of any payment by the Surety the Contractor and Indemnitors further agree that in any accounting between the Surety and Contractor, or between the Surety and the Indemnitors, or either or both of them, the Surety shall be entitled to charge for any and all disbursements made by it in good faith in and about the matters herein contemplated by this Agreement under the belief that it is or was liable for the sums and amounts so disbursed, or that it was necessary or expedient to make such disbursements, whether or not such liability, necessity or expediency existed; and that the vouchers or other evidence of any such payments made by the Surety shall be *prima facie* evidence of the fact and amount of the liability to the Surety.

### ASSIGNMENT

THIRD: The Contractor, the Indemnitors hereby consenting, will assign, transfer and set over, and does hereby assign, transfer and set over to the Surety, as collateral, to secure the obligations in any and all of the paragraphs of this Agreement and any other indebtedness and liabilities of the Contractor to the Surety, whether heretofore or hereafter, incurred, the assignment in the case of each contract to become effective as of the date of the bond covering such contract, but only in the event of (1) any abandonment, forfeiture or breach of any contracts referred to in the Bonds or of any breach of any said Bonds; or (2) of any breach of the provisions of any of the paragraphs of this Agreement; or (3) of a default in discharging such other indebtedness or liabilities when due; or (4) of any assignment by the Contractor for the benefit of creditors, or of the appointment, or of any application for the

appointment, of a receiver or trustee for the Contractor whether insolvent or not; or (5) of any proceeding which deprives the Contractor of the use of any of the machinery, equipment, plant, tools or material referred to in section (b) of this paragraph; or (6) of the Contractor's dying, absconding, disappearing, incompetency, being convicted of a felony, or imprisoned if the Contractor be an individual: (a) All the rights of the Contractor in, and growing in any manner out of, all contracts referred to in the Bonds, or in, or growing in any manner out of the Bonds; (b) All the rights, title and interest of the Contractor in and to all machinery, equipment, plants, tools, drawings, plans, designs, architectural works, documents, specifications, models and materials which are now, or may hereafter be, about or upon the site or sites of any and all of the contractual work referred to in the Bonds or elsewhere, including materials purchased for, held, intended for or chargeable to any and all contracts referred to in the bonds, materials which may be in process of construction, in storage elsewhere, or in transportation to any and all of said sites; (c) All the rights, title and interest of the Contractor in and to all subcontracts let or to be let in connection with any and all contracts referred to in the Bonds, and in and to all surety bonds supporting such subcontracts; (d) All actions, causes of actions, claims and demands whatsoever which the Contractor may have or acquire against any subcontractor, laborer or materialman, or any person furnishing or agreeing to furnish or supply labor, material, supplies, machinery, tools or other equipment in connection with or on account of any and all contracts referred to in the Bonds; and against any surety or sureties of any subcontractor, laborer, or materialman; (e) Any and all percentages retained and any and all sums that may be due or hereafter become due on account of any and all contracts referred to in the Bonds and all other contracts whether bonded or not in which the Contractor has an interest; (f) A license to use, without cost to the Surety, any interest the Contractor may have in and to all copyrights, inventions, applications, patents, or any other form of intellectual property, and any improvements thereon, which now, or may hereafter, relate to any and all of the contracts referred to in the Bonds or elsewhere, or which are now, or may hereafter be, embodied in any drawings, plans, designs, architectural works, documents, specifications, models, machinery, equipment, plants, processes or other materials referred to in section (b) of this paragraph.

#### TRUST FUND

FOURTH: If any of the Bonds are executed in connection with a contract which by its terms or by law prohibits the assignment of the contract price, or any part thereof, the Contractor and Indemnitors covenant and agree that all payments received for or on account of said contract shall be held as a trust fund in which the Surety has an interest, for the payment of obligations incurred in the performance of the contract and for labor, materials, and services furnished in the prosecution of the work provided in said contract or any authorized extension or modification thereof; and, further, it is expressly understood and declared that all monies due and to become due under any contract or contracts covered by the Bonds are trust funds, whether in the possession of the Contractor or Indemnitors or otherwise, for the benefit of and for payment of all such obligations in connection with any such contract or contracts for which the Surety would be liable under any of said Bonds, which said trust also inures to the benefit of the Surety for any liability or loss it may have or sustain under any said Bonds, and this Agreement and declaration shall also constitute notice of such trust.

#### UNIFORM COMMERCIAL CODE

FIFTH: That this Agreement shall constitute a Security Agreement to the Surety and also a Financing Statement, both in accordance with the provisions of the Uniform Commercial Code of every jurisdiction wherein such Code is in effect and may be so used by the Surety without in any way abrogating, restricting or limiting the rights of the Surety under this Agreement or under law, or in equity.

#### TAKEOVER

SIXTH: In the event of any breach or default asserted by the obligee in any said Bonds, or the Contractor has abandoned the work on or forfeited any contract or contracts covered by any said Bonds, or has failed to pay obligations incurred in connection therewith, or in the event of the death, disappearance, Contractor's conviction for a felony, imprisonment, incompetency, insolvency, or bankruptcy of the Contractor, or the appointment of a receiver or trustee for the Contractor, or the property of the Contractor, or in the event of an assignment for the benefit of creditors of the Contractor, or if any action is taken by or against the Contractor under or by virtue of the National Bankruptcy Act, or should reorganization or arrangement proceedings be filed by or against the Contractor under said Act, or if any action is taken by or against the Contractor under the insolvency laws of any state, possession, or territory of the United States the Surety shall have the right, at its option and in its sole discretion and is hereby authorized, with or without exercising any other right or option conferred upon it by law or in the terms of this Agreement, to take possession of any part or all of the work under any contract or contracts covered by any said Bonds, and at the expense of the Contractor and Indemnitors to complete or arrange for the completion of the same, and the Contractor and Indemnitors shall promptly upon demand pay to the Surety all losses, and expenses so incurred.

#### CHANGES

SEVENTH: The Surety is authorized and empowered, without notice to or knowledge of the Indemnitors to assent to any change whatsoever in the Bonds, and/or any contracts referred to in the Bonds, and/or in the general conditions, plans and/or specifications accompanying said contracts, including, but not limited to, any change in the time for the completion of said contracts and to payments or advances thereunder before the same may be due, and to assent to or take any assignment or assignments, to execute or consent to the execution of any continuations, extensions or renewals of the Bonds and to execute any substitute or substitutes therefor, with the same or different conditions, provisions and obligees and with the same or larger or smaller penalties, it being expressly understood and agreed that the Indemnitors shall remain bound under the terms of this Agreement even though any

such assent by the Surety does or might substantially increase the liability of said Indemnitors.

#### **ADVANCES**

**EIGHTH:** The Surety is authorized and empowered to guarantee loans, to advance or lend to the Contractor any money, which the Surety may see fit, for the purpose of any contracts referred to in, or guaranteed by the Bonds; and all money expended in the completion of any such contracts by the Surety, or lent or advanced from time to time to the Contractor, or guaranteed by the Surety for the purposes of any such contracts, and all costs, and expenses incurred by the Surety in relation thereto, unless repaid with legal interest by the Contractor to the Surety when due, shall be presumed to be a loss by the Surety for which the Contractor and the Indemnitors shall be responsible, notwithstanding that said money or any part thereof should not be so used by the Contractor.

#### **BOOKS AND RECORDS**

**NINTH:** At any time, and until such time as the liability of the Surety under any and all said Bonds is terminated, the Surety shall have the right to reasonable access to the books, records, and accounts of the Contractor, and Indemnitors; and any bank depository, materialman, supply house, or other person, firm, or corporation when requested by the Surety is hereby authorized to furnish the Surety any information requested including, but not limited to, the status of the work under contracts being performed by the Contractor, the condition of the performance of such contracts and payments of accounts.

#### **DECLINE EXECUTION**

**TENTH:** Unless otherwise specifically agreed in writing, the Surety may decline to execute any Bond and the Contractor and Indemnitors agree to make no claim to the contrary in consideration of the Surety's receiving this Agreement; and if the Surety shall execute a Bid or Proposal Bond, it shall have the right to decline to execute any and all of the bonds that may be required in connection with any award that may be made under the proposal for which the Bid or Proposal Bond is given and such declination shall not diminish or alter the liability that may arise by reason of having executed the Bid or Proposal Bond.

#### **NOTICE OF EXECUTION**

**ELEVENTH:** The Indemnitors hereby waive notice of the execution of said Bonds and of the acceptance of this Agreement, and the Contractor and the Indemnitors hereby waive all notice of any default, or any other act or acts giving rise to any claim under said Bonds, as well as notice of any and all liability of the Surety under said Bonds, and any and all liability on their part hereunder, to the end and effect that, the Contractor and the Indemnitors shall be and continue liable hereunder, notwithstanding any notice of any kind to which they might have been or be entitled, and notwithstanding any defenses they might have been entitled to make.

#### **HOMESTEAD**

**TWELFTH:** The Contractor and the Indemnitors hereby waive, so far as their respective obligations under this Agreement are concerned, all rights to claim any of their property, including their respective homesteads, as exempt from levy, execution, sale or other legal process under the laws of any State, Territory, or Possession.

#### **SETTLEMENTS**

**THIRTEENTH:** The Surety shall have the right to adjust, settle or compromise any claim, demand, suit or judgment upon the Bonds, unless the Contractor and the Indemnitors shall request the Surety to litigate such claim or demand, or to defend such suit, or to appeal from such judgment, and shall deposit with the Surety, at the time of such request, cash or collateral satisfactory to the Surety in kind and amount, to be used in paying any judgment or judgments rendered or that may be rendered, with interest, costs, expenses and attorneys' fees, including those of the Surety.

#### **SURETIES**

**FOURTEENTH:** In the event the Surety procures the execution of the Bonds by other sureties, or executes the Bonds with co-sureties, or reinsures any portion of said Bonds with reinsuring sureties, then all the terms and conditions of this Agreement shall inure to the benefit of such other sureties, co-sureties and reinsuring sureties, as their interests may appear.

#### **SUITS**

**FIFTEENTH:** Separate suits may be brought hereunder as causes of action accrue, and the bringing of suit or the recovery of judgment upon any cause of action shall not prejudice or bar the bringing of other suits, upon other causes of action, whether theretofore or thereafter arising.

#### **OTHER INDEMNITY**

**SIXTEENTH:** That the Contractor and the Indemnitors shall continue to remain bound under the terms of this Agreement even though the Surety may have from time to time heretofore or hereafter, with or without notice to or knowledge of the Contractor and the Indemnitors, accepted or released other agreements of indemnity or collateral in connection with the execution or procurement of said Bonds, from the Contractor or Indemnitors or others, it being expressly understood and agreed by the Contractor and the Indemnitors that any and all other rights which the Surety may have or acquire against the Contractor and the Indemnitors and/or others under any such other or additional agreements of indemnity or collateral shall be in addition to, and not in lieu of, the rights afforded the Surety under this Agreement.

## INVALIDITY

**SEVENTEENTH:** In case any of the parties mentioned in this Agreement fail to execute the same, or in case the execution hereof by any of the parties be defective or invalid for any reason, such failure, defect or invalidity shall not in any manner affect the validity of this Agreement or the liability hereunder of any of the parties executing the same, but each and every party so executing shall be and remain fully bound and liable hereunder to the same extent as if such failure, defect or invalidity had not existed. It is understood and agreed by the Contractor and Indemnitors that the rights, powers, and remedies given the Surety under this Agreement shall be and are in addition to, and not in lieu of, any and all other rights, powers, and remedies which the Surety may have or acquire against the Contractor and Indemnitors or others whether by the terms of any other agreement or by operation of law or otherwise.

## ATTORNEY IN FACT

**EIGHTEENTH:** The Contractor and Indemnitors hereby irrevocably nominate, constitute, appoint and designate the Surety as their attorney-in-fact with the right, but not the obligation, to exercise all of the rights of the Contractor and Indemnitors assigned, transferred and set over to the Surety in this Agreement, and in the name of the Contractor and Indemnitors to make, execute, and deliver any and all additional or other assignments, documents or papers deemed necessary and proper by the Surety in order to give full effect not only to the intent and meaning of the within assignments, but also to the full protection intended to be herein given to the Surety under all other provisions of this Agreement. The Contractor and Indemnitors, hereby ratify and confirm all acts and actions taken and done by the Surety as such attorney-in-fact.

## TERMINATION

**NINETEENTH:** This Agreement may be terminated by the Contractor or Indemnitors upon twenty days' written notice sent by registered mail to the Surety at its home office at 3910 Keswick Road, P.O. Box 1227, Baltimore, Maryland 21203, Attention: Vice President, Surety Department, but any such notice of termination shall not operate to modify, bar, or discharge the Contractor or the Indemnitors, as to the Bonds that may have been theretofore executed.

## BONDS FOR RELATED ENTITIES

**TWENTIETH:** The Contractor and Indemnitors hereby agree that their obligation under this Agreement shall apply to any Bonds the Surety executes on behalf of any present or future, directly or indirectly owned subsidiaries or affiliates, and any other legal entities in which the Contractor has an ownership interest including, but not limited to, any corporations, partnerships, limited liability companies (LLC) and joint ventures, whether acting alone or in joint venture with others not named herein. In addition, the Contractor and Indemnitors agree that their obligations under this Agreement shall apply to any Bonds the Surety issues on behalf of any entity upon the written request of IKBI, Inc..

**TWENTY-FIRST:** This Agreement may not be changed or modified orally. No change or modification shall be effective unless made by written endorsement executed to form a part hereof.

IN WITNESS WHEREOF, we have signed, and sealed the day and year first above written.

ATTEST OR WITNESS:

CONTRACTOR:

IKBI, Inc.  
300 Choctaw Town Center, Suite 302, Choctaw, MS 39350

SEAL

Josh W. Gamblin - President


Charlie W. Benn - Chairman of the Board  
FEIN: 20-1304785

INDEMNITORS:

The Mississippi Band of Choctaw Indians, d/b/a, Choctaw Development  
Enterprise  
201 James Billie Road, Choctaw, MS 39350

Phillip Martin  
Tribal Chief Phillip Martin - Chairman of the Board  
FEIN: 64-0345731

SEAL

  
Billy Chickaway - Secretary/Treasurer

# ZURICH AMERICAN INSURANCE COMPANY

By \_\_\_\_\_ (SEAL)  
Assistant Secretary Vice-President

## For Acknowledgment of Contractor's Signature CORPORATE ACKNOWLEDGMENT

STATE OF Mississippi } SS:  
COUNTY OF Neshoba }

On this \_\_\_\_\_ day of \_\_\_\_\_ November \_\_\_\_\_, 2004, before me, the subscriber, personally appeared Charlie W. Benn to me personally known, who, being duly sworn, did depose and say that he  
(Insert here name of officer who signs for the corporation)  
resides in the city of Choctaw, MS, that he is the \_\_\_\_\_ Chairman  
of IKBI, Inc. the corporation described in, and which executed, the within  
instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so  
affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order; and the deponent  
further said that he is acquainted with Josh W. Gamblin  
(Insert here name of officer who attests for the corporation)  
and knows that he is the President of said corporation and that he subscribed his name to the within instrument by a like order of the  
said Board of Directors.

My Commission Expires \_\_\_\_\_ (Notary Public)

## For Acknowledgment of Indemnitor's Signatures ENTERPRISE ACKNOWLEDGMENT

STATE OF Mississippi } SS:  
COUNTY OF Neshoba }

On this \_\_\_\_\_ day of \_\_\_\_\_ November \_\_\_\_\_, 2004, before me, the subscriber, personally appeared Tribal Chief Phillip Martin to me personally known,  
(Insert here name of officer who signs for the corporation)  
who, being duly sworn, did depose and say that he resides in the city of Choctaw, MS,  
that he is the Chairman of The Mississippi Band of Choctaw Indians, d/b/a Choctaw Development Enterprise, the enterprise described  
in, and which executed, the within instrument; that he knows the seal of said enterprise; that the seal affixed to said instrument is such  
enterprise seal; that it was so affixed by order of the Board of Directors of said enterprise, and that he signed his name thereto by like  
order; and the deponent further said that he is acquainted with Billy Chickaway  
(Insert here name of officer who attests for the corporation)  
and knows that he is the Secretary of said enterprise and that he subscribed his name to the within instrument by a like order of the  
said Board of Directors.

My Commission Expires \_\_\_\_\_ (Notary Public)



## RESOLUTION

BE IT RESOLVED, That Chief Phillip Martin, Chairman of the Board, and Billy Chickaway, Secretary of this enterprise (hereinafter Enterprise) be and they are hereby authorized, empowered and directed to execute, seal and deliver on behalf of this enterprise a general agreement of indemnity in favor of ZURICH AMERICAN INSURANCE COMPANY and its Subsidiaries and Affiliates including, but not limited to FIDELITY AND DEPOSIT COMPANY OF MARYLAND, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY and AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY ("hereinafter Subsidiaries and Affiliates") on a form submitted by it to protect the said ZURICH AMERICAN INSURANCE COMPANY and its Subsidiaries and Affiliates from and against any and all loss, costs, damages, attorneys' fees and expenses which it may sustain or incur by reason of executing or having executed or by reason of procuring or having procured the execution of any bonds, undertakings and obligations of suretyship or guarantee on behalf of IKBI, Inc. or any of Enterprise's present or future, directly or indirectly owned subsidiaries or affiliates, or on behalf of any other legal entity in which the Enterprise has an ownership interest including, but not limited to, corporations, partnerships, limited liability companies and joint ventures, whether alone or in joint venture with others whether or not named herein, and any corporation, partnership or person upon the written request of the Enterprise.

STATE OF Mississippi }  
COUNTY OF Neshoba } ss:

THIS IS TO CERTIFY, That the foregoing is a true and correct copy of a resolution passed by the Board of Directors of Choctaw Development Enterprise ( A Component Unit of the Mississippi Band of Choctaw Indians) at a meeting held in the City of Choctaw, MS, State of Mississippi, on the \_\_\_\_\_ day of November, 2004, at which a quorum was present and voting and that the same was spread upon the minutes of said meeting.

  
Billy Chickaway - Secretary

Subscribed and sworn to before me this \_\_\_\_\_ day of November, 2004.

\_\_\_\_\_  
Notary Public

